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THE EARLY DAYS OF THE RURAL ELECTRIFICATION IDEA: 1914–1936

MORRIS LLEWELLYN COOKE

Washington, D. C.

I

The genealogy of the rural electrification idea and the story of its gradual development through the years 1914–36 may have important implications in the study of governmental and social institutions. Up to a comparatively recent date, there have been no generally recognized laws influencing progress, whether as to science, government, or society. Progress has been recognized in the main as a matter of chance, or perhaps as something like a 100-to-1 shot in poker or horse-racing. With science, however, there is noticeable the small beginnings of a workable technique for making progress along predetermined lines. This might have been expected, since in science the items under study are relatively stable as compared with actions in government and society, and are more likely to be uniform when encountered.

In recent years, many scientific inquiries have been quite adequately financed, and coöperation on a national and international basis between thousands of researchers operating in the same or related fields, with full and free publication, has become a rule of the game. Note the strategy developed for the attack first on tuberculosis, and now in formation on the much more complex cancer problem. Yet these campaigns must be considered child's play compared with what is happening in the field of atomic fission. While it is true that in science team-play has become more and more the practice, notably in the medical field, the lone worker still persists in the academic world, where it is held that organization, especially in times of peace, means regimentation. The finest example of the application of science through organized coöperation

is in what the British call "operational research," applied first during World War II to the coördination of radar and anti-aircraft fire and, proving successful there, adopted for every phase of the fighting. Under this system, according to Waldemar Kaempffert, science editor of the *New York Times*, "zoölogists, geneticists, mathematicians, psychologists, anthropologists, physicists, and chemists worked together in teams to solve the problems presented by German bombers, the submarine menace, and the proper use of tanks and aircraft."

So if we are to make comparable progress in the policies and practices of society and government, we must work around to the view now coming to be held in the scientific world that failure to make progress, and increasingly rapid progress, is due to faulty approach and not wholly to the inherent perversity of human beings. This means stepping up interest in government and society, enlarging the number of workers, increasing funds available for research, and especially breaking down the conviction now so widely held that progress is a matter almost wholly of hit-or-miss and of chance. One misconception which bars our path to progress, whether it be in government, society, or in science, is the attitude toward the top man—the leader—found in every field of human endeavor.

The political and social concept known as the United States of America is respected throughout the world for its dynamism more than for the perfection of its organic structure or its record of achievement. However optimistically we at home may appraise its accomplishments, to date our 175-year-old democratic system—offspring of the Declaration of Independence and the Constitution—must be looked upon as still in the formative stage. To view it as static, or as in any way a finished product, spells ultimate defeat. In the light of British political experience, even our highly esteemed written Constitution has serious disadvantages which we must learn to offset.[1] All this is a short way of saying that in the development of policy and practice our democracy has a long way

[1] "The warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections; but they have found them unavoidable and are sensible, if evil is likely to arise therefrom, the remedy must come hereafter. . . . I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us." (George Washington in a letter to Bushrod Washington.)

to go if it is to measure up to the dreams of the Founding Fathers and become an increasingly useful tool in the solution of social problems increasing in complexity day by day.

One outstanding and remediable weakness in our promising but far from finished democratic régime is our excessive and growing dependence on the top executive, whether it be the President of the United States, a governor of a state, a county commissioner, the head of a union, or the foreman of a road gang. Anthropologically speaking, this appears to be largely an inheritance from the omnipotent status of the tribal chief. But as practiced today it is frequently face-saving on the grand scale. A variety of the conditions of modern life necessarily tend to accentuate it. The rapid growth of scientific and other knowledge, the far-flung geographical sweep of problems that grow out of both the development of communication facilities and the "One World" or "Two World" concepts, and the highly integrated group pressures of ever wider range all seemingly make dependence on the top the path to security, peace, and plenty. But any reliance on the top for support beyond what it can logically and actually carry becomes a source of weakness in the body politic and in the long run must be compensated for.

Such compensation can best be effected through a more outspoken recognition of the part played in all progress by those at the lower levels of the official hierarchy of public administration, and even by those who with no shred of official responsibility, but under the urge of good citizenship, seek to participate in *pro bono publico* developments both large and small. This practice may involve at times what may be painful abnegation on the part of those in the higher brackets of assigned responsibility. At the same time, it will induce a far wider participation in the democratic process by those at lower and less official levels. There is seemingly no other way by which an increasing percentage of the whole people can be made parties to democratic progress.

Modern publicity methods make such a transition at times exceedingly difficult. The newspapers seem to struggle to make the top important far beyond reality and even possibility. This makes "build-ups" easy for any individual with plenty of nerve and not necessarily very much more. On the other hand, we have bred leaders—and are still breeding them—whose glory and peace of mind would be actually enhanced if they could be given recognition

only for what belonged to them and thus share with known and unknown coöperators credit for accomplishments.

No one will deny that without a George W. Norris, a Franklin D. Roosevelt, or a David Lilienthal we might have had to wait a long time for the competent demonstration of the widespread gains to be secured through river valley development such as is afforded by the Tennessee Valley Authority. Yet if a monument were to be erected to this enterprise, it would serve democracy best if a thousand others who have contributed to the result could in some way be included. That we do not know how to do it does not mean that it cannot and should not be done.

Similarly, if it had not been for Gifford Pinchot, George W. Norris, and Franklin D. Roosevelt, we certainly would not have had the rural electrification development we have today. Yet no one would claim that these three outstanding public servants had personally and on their own initiative more than a fractional share in the outcome. I doubt if three public officials more constantly generous in giving credit to colleagues could be found. Because I followed this development for the twenty years preceding the passage of the act creating REA, it has occurred to me to jot down significant events in this history and to note some names that otherwise might not receive the credit they deserve. It is my hope that this recital may spur public servants with the minimum of official status to act with assurance and in the light of hoped-for end results, as well as to encourage unofficial participation in the early beginnings of important enterprises. As we approach the "One World" concept, everything should be done to make the righteous deeds of inconspicuous individuals seem worth while. An act affecting, perhaps vitally, a town or a township may appear to be far from inspiring when viewed on an international scale.

This record is written, therefore, perhaps primarily to illustrate a theme vital to effective public administration as well as to tell an interesting story and thereby to carry out a deeply felt obligation to skillful colleagues whose devotion to the public welfare knew no bounds. In so far as was possible for men in high place with a multiplicity of interests and responsibilities, the following details were known to Senator Norris, Governor Pinchot, and President Roosevelt, with each of whom I had the privilege of working devotedly, and entirely happily, through eventful years. Each of

them took special interest in the rural electrification idea and would have wanted to see the details of the story brought together.

II

Around the turn of the century, farms here and there began to get electricity, largely on the owner's initiative, and usually because of specially favorable conditions. By 1910, certain of the urban commercial companies began to have an eye to securing customers in the near-by countryside among those so situated as to meet all installation charges and to pay rates somewhat higher than those usual in the city proper, where the customers were nearer to what was then known as the "lighting station." Among the technicians and operating men, there was a growing consciousness of the benefits to be derived from electricity on the farm. The manufacturers of equipment also began to envision the harvest later realized under REA. Rural demand for electric service became increasingly vocal, so that in 1913 Secretary of Agriculture Wilson urged that the first census of farm electricity-users be made.

In the summer of 1914, the first electric rate case to be heard in Pennsylvania was initiated by Mayor Rudolph Blankenburg, known widely as "the old Dutch cleanser," against the Philadelphia Electric Company, operating throughout the city of Philadelphia. The public service commissioners, new to their jobs, refused to entertain the complaint pending the establishment of a prima facie case. Judge Isaac W. Pennepacker, bibliophile and satirist, and later governor of Pennsylvania, kept plaintiffs and defendants on their toes with his Pennsylvania German ideas as to what constituted good conduct. The novelty and informality of these proceedings were indicated by one of the commissioners smoking cigars continuously while "on the bench." It must be admitted that the complainants were ill-prepared for the responsibility of proving a technical case. Some of our experiences confirm the old adage that "One does not need to know French to use plaster of Paris." But we had good lawyers—William Draper Lewis, now director of the American Law Institute, and Harold Evans, a leader of the Philadelphia Bar. Mr. Evans' later services in behalf of rural electrification were invaluable. His article on "The World's Experience with Rural Electrification"[2] pointed out that rural service was an

[2] "Giant Power—Large Scale Electrical Development as a Social Factor," *Annals of the American Academy of Political and Social Science*, Mar., 1925.

accomplished fact in many foreign countries. As a member of the Pennsylvania Public Service Commission with Commissioner Scattergood—both Pinchot appointees—he drafted and obtained acceptance for General Order No. 27, specifying for the first time that a company operating in a rural area must extend its lines when there was at least one contracting consumer per mile, and that the company should pay the entire cost of the extension where there were three or more customers to the mile. While this approximates the standard later set up by REA coöperatives, it was considered so radical by the private companies that they failed to publish it in their official organ.

It was not easy in those days to get electrical engineers who would burn their breadwinning bridges behind them by testifying on the public side. Our staff of "experts" began with Clayton W. Pike, an M.I.T. graduate, who was serving under Mayor Blankenburg as chief of the city's electrical bureau. It also included Judson C. Dickerman, chief of the Bureau of Gas in the municipal administration, who drafted exhaustive tables showing rate comparisons city by city[3]—authoritatively rated as the best such study that had appeared up to that time. Dickerman later became deputy director of the Giant Power Survey and author of significant parts of its report.

By an act of God, we located in the then technical wilds of West Virginia the electrical engineer George H. Morse. Qualifying as an expert in those days was a ticklish matter. The aggressive opposition secured from Morse the names of all the places where he had been employed since college days, running from Nebraska to West Virginia. That night, telegrams went out to each of these towns in the hope that some bar sinister could be located and so break down our chief dependence.

Morse proved a most remarkable witness. Without having any access to the records or property of the company, he figured out "by induction" and with uncanny accuracy every detail of the plant. During three days of rigorous cross-examination, he made only one very unimportant slip, and somebody remarked that the error was fortunate for otherwise the witness would not have appeared human. A handsome settlement in the public interest was secured and approved April 19, 1916. Milo R. Maltbie, who for

[3] These tables were published in the report of the Bureau of Gas for 1914.

many years has been the competent and respected head of the New York Public Service Commission, supervised the "out of court" settlement under appointment by the Pennsylvania Commission.

An incident amusing or painful according to the way you look at it occurred during these proceedings. The plaintiffs had just offered in evidence an ancient newspaper in which there was reported a speech by the president of the company in which he had explained the gruesome process of welding together the property of eighteen original and local companies—quite frankly described as "junk"—into the then Philadelphia Electric Company. At about this time, a friend encountered the president of the company wandering about the halls of the capitol, near the hearing room, wringing his hands and exclaiming "This is hell! This is hell!" On inquiring what was meant by hell the president replied "Oh, having one's baby torn to pieces like this!" The interrogator is said to have remarked, "You mean undressed, don't you?" This incident is significant because it illustrates the early beginnings of practically every one of our great municipal commercially-owned electric plants valued today at many billions and for the most part being operated with great skill.

A by-product of this P. E. Company case was the Utilities Conference held in Philadelphia in 1914, attended, among others, by the mayors of ninety-seven American cities, including the mayors of our ten largest cities. Resulting from this Conference was the organization of the Utilities Bureau to aid cities and the general public in safeguarding their interests in utility matters. Then followed the publication of the *Utilities Magazine*. Never before had the public interest in the utility field been consolidated on a national basis.

None of the engineers and other experts employed on this case had known the others before the case was started. None of them had had previous experience in such proceedings. Further, they hung together in succeeding years. In my opinion, the story begins here which twenty years later led to the enactment of the REA legislation. David had become master of his sling.

Then came World War I. Many of those who helped win the Philadelphia Electric case found employment in the Power Section of the Emergency Fleet Corporation. This afforded an opportunity both to broaden their own knowledge of power matters and to initi-

ate others into the "mysteries"—and such they were in the days of reproduction cost new valuations. At that time, the number of engineers, accountants, and economists who could and would support the public contentions against the private interests was pitifully small.

From 1910 on, there was increasing talk—hardly to be described as representing any deep-seated conviction or interest—within the commercial industry as to the possible future of electricity in agriculture. Much literature was circulated. Short experimental rural lines were installed amid much hullabaloo. The industry pointed with especial pride to a six-mile experimental line at Red Wing, Minnesota, with sixteen farms connected, each lavishly equipped with current-consuming devices. In the early thirties, I attended a rural electrification luncheon given by C. E. Groesbeck, then president of Electric Bond and Share. During its course an elderly participant, after clearing his throat ostentatiously, asked "Does Mr. Cooke know about Red Wing?" The answer was "Yes, but I would have been no more surprised if the gentleman had mentioned Deuteronomy." There followed considerable laughter.

So the educational work went on. By July, 1922, the demand for a real program had become so insistent that a meeting was held in Chicago attended by representatives of the commercial industry and some farm organizations, and resulting in the formal organization on September 11, 1923, of the Committee on the Relation of Electricity to Agriculture—an organization designed to continue the talk and at all costs to keep rural electrification in commercial hands.[4]

However the shadow of the Great Forester was looming o'er the land!

III

Pinchot and Giant Power. Even before Gifford Pinchot became governor of Pennsylvania on January 1, 1923, he had made a survey of the electrical and other utility industries as they were being conducted in the state.[5] Based on his findings, he secured from the

[4] For the private industry's story, see "Pioneering the Electric Farm, 1882–1923," a section in *Farm Electrification Manual*, published by Edison Electric Institute, 1947.

[5] See *Public Utility Regulation* (New York, Ronald Press, 1924).

legislature authorization for a Giant Power Survey[6] to study, among other matters, "the generation and distribution of electric energy such as will secure for the industries, railroads, farms, and homes an abundant and cheap supply of electric current" and "the practicability of the establishment of Giant Power plants for the generation of electricity by fuel power near coal mines." In describing this survey, Pinchot said: "We are studying the social needs first." He quoted the lawyers when consulted as saying: "Find out what you want to do and we will show you how to do it under the Constitution of the United States and the constitution of the commonwealth." The engineers—not to be outdone—he tells us, replied: "You say what you want to accomplish and we will show you how to do it."

Before the organization of the Giant Power Survey, practically all references to rural electrification had been casual or limited to a high-cost service and in no way suggestive of the present-day development. Even those more progressive executives like G. C. Neff, president of Wisconsin Light and Power, which provided service to farms in the region west of Milwaukee, practiced line development as contrasted with area coverage. We called these "snake lines," as they went now in one direction and then in another in order to reach the cream of the business. Usually a territory, once covered in this haphazard way, is precluded from being economically developed on an area basis where every farm is considered as an active or potential customer.

About midway in the Pinchot term (1923–27) there were some 200,000 farms having electric service; but many of these had home Diesel sets. The commercial companies still charged urban rates plus something to take care of the alleged extra costs. These rates ignored the fact that urban customers then used electricity almost exclusively for light, while farm users needed power in addition, and this latter is "a profitable load." Rural rates of from twenty to thirty cents per kilowatt hour were not exceptional, and this on top of the fact that the rural customer almost invariably paid the entire cost of building his extension.

About this time we began to hear more and more about the Ontario "Hydro Electric" and of its principal promoter—one of

[6] See Giant Power issue of *Survey Graphic*, Mar., 1924, a very remarkable publication, edited by Robert W. Bruere and having, because of its imaginative sweep, plenty of present-day interest.

the great men of our time—Sir Adam Beck, Kt., LL.D. That it was bitterly attacked, principally by the commercial interests in this country, was probably a good thing because through the necessity for meeting these calumnies both the success and brilliant promise of the enterprise were widely advertised. The low "Hydro" rates—including rural rates—were constantly kept before our people, largely through the painstaking and convincing work of Judson King and the publications of his National Popular Government League. Much of this material was inserted in the *Congressional Record* by Senator George W. Norris and without doubt was influential in buoying him up in the early dark days which eventually led up to his legislation for TVA and REA. Perhaps the first article to describe in human terms what electricity can do, and which over large areas in the United States it has in large measure now done, to life on the farm is "Following the Hydro" by Martha Bensley Bruere in the Giant Power issue of *Survey Graphic*.

About 1912, the late Edward T. Stotesbury, then of the house of Morgan, brought Thomas E. Mitten from Chicago to reorganize and rehabilitate Philadelphia's traction system. Possibly simply to cut the rate paid for his electric power, but perhaps more likely as a phase of his developing emperor complex, Mitten, as the years went by, cast increasingly covetous eyes on the control of the Philadelphia Electric Company. He eventually came a cropper when in April, 1925, he lost out in a proxy fight for control of the company. But as a feature of this imaginative campaign, Mitten had conducted about five years before, 1919–1920, elaborate engineering studies on the feasibility of generating at the mines in central Pennsylvania the electricity required in Philadelphia and establishing in connection therewith huge chemical plants for the recovery of valuable by-products.[7] He planned a great saving in expense by transmitting the current 235 miles on wires instead of hauling the required coal the same distance in cars. Curiously enough, this loss of a tremendous volume of bulk low-rate freight would have been welcomed by the Pennsylvania Railroad as freeing its tracks for an increased volume of more profitable business. Increasing trackage for a railroad going through territory already built up is attended by almost insuperable difficulties.

[7] See *Economic Power Production*, edited by Otto M. Rau and privately printed in Philadelphia, 1920.

When the Giant Power Survey was organized, Otto M. Rau,[8] an electrical engineer who had supervised the survey of the mine-mouth project for Mitten, joined the staff. He is a good example of the wide variety of talent which laid the foundation for the REA legislation. As a very young man, he wired his home—which he thought was the first house in this country to have electric light—a three-story weatherboard house in Jersey City. This was before the days when Edison incandescent bulbs were available. Rau used Swan bulbs imported from England. His power plant equipped with a fuel oil tank was located on the third floor and was a matter of constant anxiety to his family. It was the idea of mine-mouth generation and consequent long-distance transmission which captured the attention of the public and led the legislature to an adequate support of the Giant Power studies covering every phase of electrical development including the rural.

In the Giant Power Report[9] of nearly 500 pages, about 150 pages were devoted to detailed studies of various phases of rural electrification, principally by George H. Morse and Judson C. Dickerman, carry-overs from the Philadelphia Electric case. These articles constitute the first handbook on the subject. Perry R. Taylor, who was later very active in REA—in fact, its first executive officer and *pro tem* administrator—had charge of the office administration and made the survey showing road mileages by townships and counties. This was somewhat like "making bricks without straw" in those days. An exhibit which interested the legislature was a farm on the outskirts of Harrisburg arranged for and sanely equipped by General Manager Palmer, of the Harrisburg Electric Company, against the violent opposition of the electrical industry. Among those who were active in Giant Power work, the attorney-general under Pinchot, George W. Woodruff, and his deputy, Philip P. Wells, who handled the legislation, were both distinguished carry-overs from Theodore Roosevelt's kitchen cabinet.

The Distribution Cost Factor. On May 6, 1931, Franklin D. Roosevelt, as governor of New York, set up the Power Authority of the State of New York, under the chairmanship of a splendid man, Frank P. Walsh, to have as its principal concern the development of the water powers of the St. Lawrence River, jointly owned

[8] Died May 20, 1947.

[9] Report of the Giant Power Survey Board to the General Assembly of the Commonwealth of Pennsylvania, 1925.

by the United States and Canada. It soon developed that plans for marketing St. Lawrence power to small users—urban and farm homes—could not be developed in the absence of definite information as to distribution costs. Ample data as to the cost of transmitted current—generation costs plus transmittal cost—were available, but the public knew practically nothing as to what it costs to carry electricity from the boundary of the transmission zone through the distribution system to the various points of use by the smaller consumers. Yet the national bill for distribution at the time was almost equal to the national bill for generation and transmission combined. The private industry not only did not practice distribution cost-finding, but had actually taken steps to prevent the development of such cost-finding methods, presumably because if regulation rates were discovered to be too high, somebody would move to have them reduced, while if too low, nobody would be likely to move to have them raised.

So the Power Authority made a small appropriation to cover the expense of coördinating certain inquiries which had grown out of the Giant Power studies, and thus to solve "once and for all" the problem of distribution costs. The effort was completely successful.[10] The resulting papers and others having coördinate interest were read at the Institute of Public Engineering meeting held on January 20, 1933, in New York City under the auspices of the Power Authority of the State of New York in association with the public service commissions of the District of Columbia, New York, and Pennsylvania. The proceedings were published in book form[11] and were generally admitted to be not only sound technically but an opening of the door both to urban and rural small-consumer service on actual cost plus a reasonable profit.

As a preliminary to conferences with the commercial electrical industry designed to push rural electrification by one means or another, and in order to confirm the conclusions tentatively arrived at to the effect that widespread rural electrification was gen-

[10] Among those who worked on this problem who were carry-overs from Giant Power days were: O. M. Rau, August Ullmann, Jr., Judson C. Dickerman, George M. Morse, Clayton W. Pike, with new recruits including Willard E. Herring, T. Herbert Clegg (killed Nov. 21, 1933), Horace E. Kiefer, J. D. Ross, Roy Husselman, Ernest Bradford, and Harlow S. Person.

[11] "What Electricity Costs in the Home and on the Farm; A Symposium" (*New Republic*, 1933).

erally feasible, a two-day conference was held at the University Club in Philadelphia on August 11–12, 1933, attended by most of the engineers who had worked on the distribution cost study. Roy Husselman of Cleveland, Ohio, had had enlightening experiences in giving electric service to thinly built-up sections, and his testimony and that of Willard E. Herring, formerly in charge of Philadelphia Electric Company developments in Bucks county, Pennsylvania, were specially helpful.

It is clear from the correspondence of Gifford Pinchot recently deposited in the Library of Congress that in setting up the reconstituted Power Authority, Governor Roosevelt had sought his counsel. In fact, appointments were made to the staff of the Authority in line with recommendations which Governor Pinchot had made. Through his experience at Warm Springs, Georgia, and later as governor of New York, Roosevelt became convinced that electricity widely distributed at attainable rates would exert a powerful social influence. The use of electricity for pumping water was with him at least as important as for providing light.

The first official action of the federal government pointing the way toward the present rural electrification program came with the passage of the Tennessee Valley Authority Act on May 18, 1933. The act directed the Board of Directors of TVA to give preference in the sale of surplus power to states, counties, municipalities, and "coöperative organizations of citizens or farmers," and authorized the Board to construct electric transmission lines to "farms and small villages" in order to "promote and encourage the fullest possible" rural electrification.[12] The act expressly declared that the government's policy was to sell and distribute surplus power primarily "for the benefit of the people as a whole and particularly the domestic and rural consumers."[13] Accordingly, sales to industry were to be utilized primarily to "permit domestic and rural use at the lowest possible rates" and "encourage increased domestic and rural use of electricity."[14]

Soon after the establishment of the Board of Directors of the Tennessee Valley Authority, the groundwork for the distribution of electricity in rural areas of the Tennessee Valley by means of consumer-owned coöperatives was begun. From the beginning, it

[12] Tennessee Valley Authority Act of 1933, Sec. 10 (48 Stat. 58, 64; 16 U.S.C., Sec. 831 *et seq.*, 1940).

[13] *Ibid.*, pp. 64, 65. [14] *Ibid.*

has been the consistent policy of TVA, in the acquisition of operating electric systems, to effect, wherever feasible, the transfer of electric distribution properties serving rural communities to rural electric coöperatives, to serve as a nucleus for area-wide rural electrification. Encouragement and technical assistance were given by the TVA staff to local interested groups of farmers. On June 1, 1934, the first rural electric coöperative in the TVA area, the Alcorn County Electric Power Association, commenced operations with the transfer by TVA to the coöperative of the distribution properties serving Alcorn county, Mississippi, acquired by TVA in the acquisition of the properties of the Mississippi Power Company serving northeastern Mississippi. By July 1, 1935, two additional pioneer coöperatives, Pontotoc Electric Power Association and Prentiss County Electric Power Association, were operating distributors of TVA power in northern Mississippi, each having acquired a nucleus electric system by transfer from, and with the financial assistance of, TVA acting in accordance with its organic charter. As we shall see, this early experience with the coöperative device proved of definite value to the development of the present national rural electrification program.

Meanwhile, progress was being made toward attacking the rural electrification problem on a nation-wide scale. Early in 1934, Harold Ickes, Secretary of the Interior and Public Works Administrator, had his attention called to data which had been assembled by the Mississippi Valley Committee—including in its personnel several hold-overs from Giant Power and distribution-cost-study days—showing shockingly small amounts of rural electrification in the several watersheds constituting the Mississippi Valley.[15] Of the six million farms in the United States, over 800,000 by that time had in some fashion been "electrified." But only about 650,000 had high-line service. Over five million farms were entirely without electric service.

The suggestion was made to Secretary Ickes that a commission be set up, half government and half commercial industry, with a government chairman to consider what should be done. The Secretary's reply was immediate and forceful: "I will have nothing to do with the blankety-blanks!" "Then will you consider a plan wholly

[15] See "Report of the Mississippi Valley Committee of the Public Works Administration, Oct. 1, 1934, pp. 51–53, with accompanying illustrations.

under control of public authority?" "Can it be done?" "Yes." "Then shoot!"

On February 13, 1934, Secretary Ickes was given two copies of a report[16] showing the financial and economic feasibility of rural electrification and its social desirability. One of the copies was given the next day to President Roosevelt and later was read with approval by Secretary of Commerce Daniel C. Roper, Harry Hopkins (in charge of relief), and others. Perhaps its bizarre black-and-white-striped cover kept it circulating among those in high place and so out of the wastebasket. It may be said that the reception accorded this report made certain that the federal government would see that rural electrification was made an essential feature in our economy, as had already happened over large parts of Europe. One of the features of this report was a letter from Vincent Nicholson, later to become General Counsel for REA, in which he recommended legal dependence upon the welfare clause of the Constitution. His advice was later acted upon, and his judgment has been fully justified. Lawyer Evans of P. E. Co., and Giant Power days, reported on how the proposed plan as finally adopted by REA would fit into the utility set-up in the several states.

By this time, Harry Hopkins' relief organization had been started and the engineering section under Jacob Baker, John M. Carmody, and Perry R. Fellowes[17] had included rural electrification in its program—led to do so, according to the latter, because the initiative had been taken by relief officials in North Carolina and elsewhere. Some actual construction had been undertaken. Gradually, during the latter part of 1934 and the early part of 1935, plans began to take shape and a skeleton of personnel was assembled. Finally on May 11, 1935, President Roosevelt issued an executive order setting up the Rural Electrification Administration and allocating $75,000 for administrative expenses. Morris L. Cooke was confirmed as administrator on May 20. The first allocation for projects—$2,351,355—was made from relief funds on September 9, 1935.

[16] See "National Plan for the Advancement of Rural Electrification under Federal Leadership & Control with State & Local Coöperation and as a Wholly Public Enterprise." A note on the title-page read: "This report can be read in 12 minutes. Supporting details will be found in the appendices."

[17] Fellowes is now putting in an Ethiopian five-year plan or its equivalent for Haillie Selassie, Lion of Judah, and direct descendant of the Queen of Sheba. Perhaps it includes rural electrification.

In an effort to get the coöperation of the commercial companies in the new program, a conference was held in the old Interior Building in the late spring, with possibly sixteen top-ranking officials present. But our proposals seemed to them fantastic. This failing, a conference was held at the Lafayette Hotel with the officials of municipal plants located in different parts of the country. No one such plant was willing to carry its lines beyond the municipal boundaries in order to serve rural customers. With these two possibilities out of the way, an exploratory conference on the promotion of rural electrification through coöperatives was held on June 6, 1935, at which, among other things, Joseph C. Swidler of the TVA legal staff recounted the earlier experience of TVA in connection with the formation and operations of the Alcorn County Electric Power Association. The conference was most encouraging, and thus finally the plan for executing the program through cooperatives was devised; and it has proved increasingly successful.

As the general relief program got under way, President Roosevelt personally established certain standards to be observed in making expenditures so as to insure that the maximum of relief should go to those actually in need. One of these rules was to the effect that at least ninety cents on the dollar should reach those for whom the money had been specifically voted. We had not gone very far in our expenditures when, at a meeting at the White House, President Roosevelt asked me very pointedly whether our work in building rural lines met this test. The answer was "No!" Our experience had shown that a preponderant part of the expense was incurred in buying materials and equipment and in wages for skilled artisans whose services were required in setting up the lines. Curiously enough, a very small percentage of our outlays went for unskilled labor, the class then in direct need.

Fortunately, just at this time Senator Norris was speculating as to whether the time had not arrived for putting rural electrification on a permanent basis and thus detaching it from the relief program. There was an exchange of letters between him and the Rural Electrification Administration[18] which led to the drafting of the new legislation and its introduction in the Senate by Senator Norris and in the House by Congressman Sam Rayburn. The REA Act was approved by President Roosevelt on May 20, 1936. During its life-

[18] See *Rural Electrification News*, Vol. 1, No. 3 (Nov., 1935).

time, Congress has placed at the disposal of REA somewhat over 500 millions which, with the exception of a small percentage required for administration, has been loaned to coöperatives and will in due course be returned to the Treasury.

REA is the lineal descendant of the Philadelphia Electric case (1914–16), the Giant Power Survey (1923–1927), the distribution-cost studies of the Power Authority of the State of New York (1932–34), the passage of the TVA Act in 1933 after years of study and struggle, the report of the Mississippi Valley Committee (1933–34), and the depression with its necessity for finding work for the needy (1934–1936). Page the farmer and the farmer's wife on 3,500,000 farms and ask them whether this was a plant worth nurturing! Give Pinchot, Norris, and Roosevelt full credit for their masterful, courageous, and imaginative leadership; and then have a thought for possibly two score indispensable men and women down the line without whose willingness to work skillfully and conscientiously, with plenty of overtime, and sometimes in the face of the biting scorn of the opposing commercial interests, always at modest compensation and often without any compensation at all, such accomplishments would have been impossible.[19]

[19] Most of the publications and documents cited above—several of them the only known copies—have been filed with the Library of Congress under the title of this paper.

NEW CONSTITUTIONS IN GERMANY

ROBERT G. NEUMANN
University of California at Los Angeles

When the European Advisory Commission in London debated the zonal division of Germany,[1] the original understanding was that the allied zones of occupation should not disturb existing administrative regions more than was absolutely necessary.[2] Nevertheless, a considerable redrawing of provincial and *Laender* borders took place, partly in order to prevent a *Land* from administering territory in more than one zone of occupation,[3] partly in the interest of administrative simplification.[4] The present division of Germany into "independent" *Laender* and autonomous provinces is, therefore, not a repetition of the pre-1871 set-up, but a new and often simpler form of organization.[5]

Under the Weimar Republic, these states had their own constitutions. However, the powers of the Reich government were so overwhelming and the scope of their "enumerated" functions[6] so all-embracing, that relatively small scope was left to the *Laender* governments. The present situation is radically different. Now the *Laender* are the highest levels of government[7] and, in addition to

[1] 1943–45.

[2] It was clear from the outset that this principle could not apply to Prussia, which, because of its size, importance, and location, would have given overwhelming superiority to any zone in which it might have been located. Since then, Prussia has been abolished as a state by order of the Allied Control Council.

[3] The former Rhine Province, an administrative part of Prussia, was divided into a British-occupied state, North Rhine-Westphalia, and a French-occupied state, Rhineland-Palatinate. In a similar manner, both Wuerttemberg and Baden were divided between the French and the American zones, and the Prussian Province of Erfurt became part of Thuringia.

[4] The new *Land* of Hesse was formed out of all or parts of the former *Land* Hesse, the Province of Hesse-Nassau, and the Province of Kurhesse.

[5] Apart from the quadripartite-controlled city of Berlin, there are now the following *Laender* and autonomous regions: *U. S.:* Bavaria, Hesse, Wuerttemberg-Baden, Bremen, Enclave. *British:* North-Rhine-Westphalia, Schleswig-Holstein, Lower Saxony, Hamburg. *Soviet:* Thuringia, Saxony, Saxony-Anhalt, Mecklenburg-Vorpommern, Brandenburg. *French:* Rhineland-Palatinate, Wuerttemberg, Baden, and the partly separated Saarland.

[6] Cf. German constitution of August 11, 1919, Arts. 6–15.

[7] Neither the Council of Prime Ministers of the American Zone (*Laenderrat*) nor the new bi-zonal agencies for the British and American zones are full governments. Nor is the Central Administration (*Zentralverwaltung*) in the Soviet area a true zonal administration.

their previous functions, have had to absorb all pertinent activities previously exercised by the Reich government and its agencies. Such *Laender* constitutions as existed before were, therefore, of little help in drafting new instruments, and the various constitutional conventions and drafting committees paid relatively little attention to them. On the other hand, the experience of the Weimar constitution was studied avidly, and various national constitutions and forms of government were examined. Among the fundamental laws studied, the constitutions of the United States, France, and the Soviet Union received special attention. Although several constitutions[8] envisage eventual absorption into an all-German state,[9] they are in every form constitutions of seemingly sovereign states and not of mere members in a federal union.

If it is the goal of a constitution to lay down in short and meaningful terms the general organization of state and government, as well as the fundamental rights of the citizen, the new German constitutions fall far short of this ideal, although some of them are farther removed from it than others. The American founding fathers were content with confining their general expressions of aims and aspirations to a brief preamble to the constitution, while the rest of the instrument became another example of that eminently practical approach that has characterized Anglo-American legal documents since the days of Magna Carta. The fathers of the new German constitutions were not able or willing to take a similar course of action. As a result, all German constitutions not only are excessively long[10] and therefore hardly capable of becoming "popular" documents, but betray the same desire for being "all-inclusive" characteristic of former German laws and constitutions. Thus meas-

[8] Constitutions have now been adopted by all German *Laender* with the exception of the British zone of occupation where the drafting process is still in its earlier stages. The recently drafted constitution considered for the *Saarland*, which had not been ratified as these lines were written, was made with that area's special relations to France in mind and is not considered here.

[9] Preamble to the constitution of Hesse (October 29, 1946); Art. 1 of the constitution of Thuringia (January 23, 1947). Cf. also Art. 41 of the latter document: "All-German law invalidates *Land* law" (*Gesamtdeutsches Recht bricht Landesrecht*). This provision follows the almost identical wording of Art. 13, Weimar constitution (*Reichsrecht bricht Landrecht.*)

[10] The Bavarian constitution of October 26, 1946, has a preamble and 188 articles. Most of the others have well over 100 articles, but the constitution of Thuringia is content with 81.

ures which might well have been left to ordinary legislation,[11] or executive orders and directives,[12] have been transformed into constitutional strait-jackets.

Another feature meriting criticism is the fact that in all documents lofty, general expressions of hopes and aspirations which no court could enforce[13] are strewn around more or less haphazardly among more meaningful provisions. It would not be correct to say that the inclusion of mere verbiage does not cause any harm because it is simply disregarded. In the last analysis, a constitution stands or falls with the importance attributed to it by the people of a country. If a constitution is encumbered with a great deal of ballast, there is grave danger that, in popular esteem, it will follow a kind of Gresham's law and get the reputation of being meaningless altogether.

Any criticism of the many sweeping generalities contained in these new documents might be less severe if they actually proclaimed new ideas of government or philosophy. However, this is by no means the case. Apart from cautious, and often contradic-

[11] The perpetuation of the proportional system of representation. Cf. Bavarian constitution, Art. 14; constitution of Hesse, Art. 75; constitution of Wüerttemberg-Baden, Art. 52.

[12] Cf. the minute directives to public school teachers (Bavarian constitution, Arts. 131–137; Wuerttemberg-Baden, Art. 36; Hesse, Arts. 55–58; Thuringia, Art. 72), including even such trivia as the provision that "girls are to be trained in baby-care, education of children, and household management." (Art. 131, Sec. 4, Bavarian constitution.)

One well might wonder why the following provisions were elevated to the undeserved dignity of constitutional articles: "Schools shall not merely convey knowledge and ability, but shall also develop sympathetic hearts and character. The highest objectives of education are reverence for God, respect for religious convictions and human dignity, self-control, a keen sense for and ready acceptance of responsibility (*Verantwortungsgefühl und Verantwortungsfreudigkeit*), a willingness to help others, and receptiveness for all that is true, good, and beautiful." (Art. 131, Secs. 1 and 2, Bavarian constitution.) The Hessian constitution (Art. 56, Par. 4) admonishes teachers as follows: "The teaching of history must be directed towards a true, unvarnished presentation of the past. Special attention is to be paid to the great benefactors of mankind, to the development of the State, economics, civilization, and culture, rather than to warlords, wars, and battles. Concepts which endanger the foundations of the democratic state must not be tolerated."

[13] Cf. Bavarian constitution, Art. 166, sec. 2: "Everyone has a right to make an adequate living by means of his labor" and the "right to adequate housing" (Art. 106, Sec. 1). Many other constitutions contain similar provisions. Since these "rights" are of course completely devoid of any legal enforceability, they belong in the realm of propaganda and have therefore been excluded from further consideration.

tory, passages permitting a certain amount of socialization, the German constitutions have merely absorbed the contents of various and divergent political pamphlets and party platforms. And how could it be different? The men who drew up these new constitutions were politicians imbued with the outlook of their respective parties. Far more than in the Anglo-American countries, political propaganda in Germany has always travelled on the highway of glittering generalities. Perhaps the framers built themselves a prison of *Weltanschauung* from which they could no longer escape. Such a development had already overshadowed the drafting of the Weimar constitution.[14] It was even more in evidence after the downfall of the Nazi régime, when old and new political parties appeared from oblivion and were anxious to establish their ideas and principles in the public eye.

I. THE DRAFTING PROCESS

While Allied Military Government favored and furthered the idea of establishing constitutional documents at an early stage, none of the occupying powers took a direct hand in guiding the various drafting committees and assemblies in their work. Certain general principles were drawn up both by the U. S.[15] and the Soviet authorities,[16] but those were principles which the respective German groups would probably have observed in any case. Only in the British zone, where the turn-over of responsibility to the Germans has been far slower than elsewhere, is there no comparable development as yet.[17]

In the American and French zones, drafts were outlined by preparatory committees on which all political parties were represented. In the Soviet zone, finished drafts were submitted by the SED[18] groups in the respective *Land* diets to the judiciary committee of the *Landtage*, but few changes were made there and a summary procedure seems to have prevailed both in the committees and in

[14] Cf. the succinct observations of René Brunet, in *The New German Constitution* (English translation by J. Gollomb, New York, 1922), p. 197.

[15] OMGUS (Office of Military Government for Germany, U. S.) directive of September 30, 1946, entitled: "Relationships Between Military and Civil Government (U. S. Zone) subsequent to Adoption of Land Constitutions."

[16] Order No. 332 of November 11, 1946, Soviet Military Administration.

[17] Purely provisional constitutions, such as the constitution for Hamburg (of May 15, 1946, as amended October 8, 1946) have not been considered.

[18] The Communist-dominated Socialist Unity Party.

the plenary sessions of the diets.[19] The SED-drafts therefore became virtually the texts of the new constitutions in the Soviet zone, which may also explain the great degree of similarity among them.

In the American and French zones, the drafts submitted by the preparatory committees were debated, article by article, in single drafting committees, each elected by its respective *Land* constitutional assembly, rather than in many specialized subcommittees. Prior to that, the various political parties had drafted certain principles in caucus and had submitted them to the drafting committees. Adoption by the Assembly was then assured.[20] Except for the Soviet zone, all constitutions were submitted to popular referenda and approved.

II. STATUS AND RELATIONSHIP TO A FUTURE ALL-GERMAN STATE

It seems that in order not to prejudice a future German federation or state, the *Laender* have generally avoided a precise legal definition of their status. The word "*Freistaat*"[21] seems to prevail, but even that vague expression was too "separatist" for Thuringia[22] and the term *Land* was used despite the fact that the former Thuringian constitution[23] had actually used the word *Freistaat*. Hesse was bold enough to declare itself a republic (Art. 65), while Wuerttemberg-Baden described itself as a "democratic and progressive people's state"[24] (Art. 43).

It was to be expected that the newly formed *Laender* would have to consider their relationship to a future German state. But while they wished to avoid the possibility of being tagged with a "separatist" label[25]—always an explosive issue in Germany—they also

[19] In Thuringia, for example, the SED group in the *Landtag* submitted its draft to the Judiciary Committee on December 4, 1946. The Committee reported to the *Landtag* two weeks later, on December 18. The *Landtag* approved the constitution unanimously two days later, on December 20, 1947—the time from which that constitution is dated.

[20] Cf. *Constitutions of Bavaria, Hesse, and Wuerttemberg-Baden*, issued by OMGUS, Berlin, February 15, 1947, p. 2.

[21] Roughly translated as "republic," but without the sovereign connotation of the English expression.

[22] That the omission of the word *Freistaat* was intentional is evidenced by the semi-official commentary of Dr. Karl Schultes. Cf. *Die Verfassung des Landes Thüringen* (Weimar, 1947), p. 5.

[23] Constitution of March 11, 1921, as amended December 21, 1926.

[24] "Wuerttemberg-Baden ist ein demokratischer und sozialer Volksstaat."

[25] No such compunction appears to have prevailed in the *Saarland*, whose *Landtag* adopted a frankly separatist constitution on November 8, 1947.

had to avoid the accusation of conducting "Pan-German" propaganda, which would have aroused the ire of Military Government. The *Laender* in the Soviet zone proclaimed themselves "parts of a German Democratic Republic" and promised to "regulate their public affairs within the framework of the German Democratic Republic." Similar provisions can be found in the constitutions of Hesse (Art. 64) and of Wuerttemberg-Baden (Art. 43). This position is further strengthened in the constitutions of Thuringia (Art. 41) and Hesse (Art. 153) to the effect that all-German law shall override *Land* law.[26] Similar, but less far-reaching is the passage of the Wuerttemberg-Baden constitution (Art. 105), pronouncing those constitutional provisions void which shall be found to be contrary to the text of a future German constitution.

The Bavarian constitution provides more cautiously that "Bavaria will join a future federal state" (Art. 178), but demands that such a federation be based on voluntary adherence and that the individual states retain a measure of autonomy.[27] The *Land* Baden is most non-committal. Its fundamental law merely provides (Art. 52) that any adherence to a future German constitution would necessitate a constitutional amendment. The aloof position of Baden is further accentuated by the establishment of the position of a state president who combines this high office with that of prime minister.[28]

The German states of the Western zones envisage the existence of interstate[29] and interzonal[30] authorities and pledge coöperation with the consent of the *Landtag*.[31] The constitution of Hesse de-

[26] The question of what constitutes all-German law is not quite so clear as it may appear. Ordinarily one might presume that this means the national law of a future German Republic. However, there are some indications that many believe in the existence of a *Reich* law, although there is no *Reich*, and that the *Laender*, acting as if in lieu of the lacking all-German legislature, should abrogate this "law" only when necessary. Such a viewpoint is vaguely indicated by Schultes, *op. cit.*, pp. 5–6. In this connection, it may be of some interest to note that the Soviet Military Administration found it necessary (Order No. 110, October 26, 1945) to empower the *Laender* specifically to amend *Reich* law.

[27] The German term is *staatsrechtliches Eigenleben*.

[28] The creation of a state president was widely discussed in Bavaria, but eventually discarded.

[29] The interstate council (*Laenderrat*) of the U. S. zone came into effect on October 17, 1945.

[30] The agreement for the economic merger of the British and U. S. zones was signed December 2, 1946, by Secretaries Bevin and Byrnes.

[31] Art. 106, constitution of Wuerttemberg-Baden, provides that the constitu-

mands, in addition, that any transfer of power to an interstate agency should be permissible only if the officers of such agency are directly or indirectly selected by a democractic process (Art. 152).

III. CIVIL LIBERTIES AND FUNDAMENTAL RIGHTS

All German constitutions are most liberal in "guaranteeing" every conceivable kind of "right." Thus, freedom of speech, press, assembly, religion, and association, as well as something like habeas corpus, are established. In addition, the *Laender* of the Western zones prohibit censorship and punishment on the basis of an ex post facto law,[32] as well as double jeopardy. A closer scrutiny will reveal, however, that all of these rights are considerably circumscribed. Above all, the ominous wording of the Weimar constitution,[33] to the effect that civil rights are guaranteed "within the limits of the law," makes its reappearance everywhere. In addition, the infamous Article 48 of the Weimar constitution also enjoys a rebirth in some states. Most far-reaching is the situation in Bavaria and Wuerttemberg-Baden, where the government may suspend freedom of speech, press, assembly and invoke censorship "when public safety and order are in danger" (Art. 48, Bavarian constitution), or when there is "imminent danger" (Art. 79, Wuerttemberg-Baden). It is true that the *Land* government must inform the *Landtag* of its action immediately and set it aside when the Diet so demands. But it is only too well remembered how the virtually identical wording of Article 48 of the Weimar constitution did not prevent the rule by decree which characterized the last years of the Weimar agony. Advances, however, have been made. Both constitutions put a time limit on the prolongation of the emergency measures by the *Landtag*,[34] and Bavaria specifically allows an appeal to the Supreme Constitutional Court (*Verfassungsgerichtshof*). The Weimar constitution provided for neither. The time-limit would hamper the exercise of dictatorial powers only if Government and *Landtag* were at odds. Otherwise, there is virtually no stopping of the *Landtag* when emergency actions are supposedly required by danger to "public safety, morality, health, and wel-

tion shall not hamper the government's work in interstate agencies. However, the government remains responsible to the *Landtag* for its actions.

[32] Unless the ex post facto law is more favorable to the accused than the statute under which the offense was committed. Cf. Baden constitution, Art. 116.

[33] Arts. 111–118, 123–126, 135–137, 153. [34] One month.

fare."[35] The check on these and other powers by the Supreme Constitutional Court would indeed be a great step forward if this august tribunal would free itself from the customary servility of German courts to the executive branch. So far this and similar courts have given no evidence of either courage, independence, or imagination.

Somewhat less sweeping is the emergency article of the Hessian constitution (Art. 125), giving the right to the *Landtag* to suspend with two-thirds majority the rights of press and assembly, and establish censorship if it resolves that "the constitutional system is in danger." The time limit here is three months. In Baden (Art. 18), only the right of assembly in the open air may be suspended in an emergency.

No special emergency provisions exist in the constitutions of the Soviet zone, but the phrase that civil liberties may be "restricted only by a general law"[36] is sufficiently broad for such purposes. It should also be noted that under the constitution of Thuringia the so-called "permanent committee" of the *Landtage* may pass laws[37] in an emergency, but must submit them to the *Landtag* immediately.[38] Finally, there is no judicial review in the Soviet zone.[39]

None of these rights can be claimed by those tried or disfranchized under the denazification and demilitarization laws. Some constitutions put a time-limit on this particular provision;[40] and by the time specified the process of denazification will presumably be over, the worst offenders punished, and the lesser offenders will be deemed ready for re-entry into the political community. These time limits are, however, of a declaratory character only. If Military Government insists on retention of the denazification laws and their continued enforcement, no German constitution will be able to hold out against that. If, however, Military Government should

[35] Art. 98, Bavarian constitution, reads as follows: "The fundamental rights guaranteed by the Constitution may, on principle, not be restricted. Restrictions by law are permissible only if public safety, morality, health, and welfare compel it (*zwingend erfordern*). *Other* [italics mine] limitations are permissible only under the conditions of Article 48. The Supreme Constitutional Court must declare laws and ordinances void which restrict a fundamental law *contrary to the constitution* [italics mine].

[36] Thuringian constitution, Art. 3, Sec. 3. [37] Art. 18, Sec. 2.

[38] The institution of a permanent committee was known to the Weimar constitution (Art. 35, sec. 2). Its legislative power, however, is an innovation.

[39] See below.

[40] Wuerttemberg-Baden, January 1, 1949 (Art. 104); Baden, December, 1948 (Art. 128); Hesse, December 31, 1950 (Art. 157).

either reverse itself[41] or withdraw from Germany, a speedy end to all serious denazification, except for a few key figures, could be safely predicted.

IV. THE LEGISLATURE

With one exception, all *Laender* constitutions provide for a powerful, unicameral legislature. Only Bavaria has a second chamber—the Senate[42]—a primarily advisory body which cannot hold up legislation for more than a month.[43]

In the Soviet zone, the legislatures are supreme and their power virtually unrestricted. They are proclaimed the "highest organ of the democratic will."[44] All other powers are subject to their hegemony; even the bureaucracy is directly controlled by them.[45] But also in the *Laender* of the Western zones the legislative branch is the most powerful part of the government, even where the principle of the separation of powers has been formally proclaimed,[46] or where a feeble attempt is made to make the executive branch independent from the *Landtag*.[47]

The German states follow the example of the new French constitution[48] in authorizing the legislature to elect the prime minister

[41] On December 24, 1946, General Joseph T. McNarney proclaimed an amnesty for former Nazis belonging to class 3 (minor offenders) and 4 (followers) under the classification of Art. 4 of the "Law for Liberation from National Socialism and Militarism" of March 5, 1946, enacted by the *Laenderrat* and promulgated for Bavaria, Hesse, and Wuerttemberg-Baden. Cf. James K. Pollock and James H. Meisel, *Germany under Occupation* (Ann Arbor, 1947), pp. 179–196.

[42] The members (60) of the Senate are elected by 10 different professional and interest groups representing: agriculture (11), industry and trade (5), craftsmen (5), labor unions (11), professional men (4), coöperatives (5), religious groups (5), welfare organizations (5), universities (3), and local government (6). Art. 35.

[43] In case the *Landtag* declares a bill "urgent," the Senate must make up its mind within one week. Art. 41.

[44] Constitution of Thuringia, Art. 8, Sec. 1.

[45] *Ibid.*, Sec. 4.

[46] Constitution of Wuerttemberg-Baden, Art. 48.

[47] Constitution of Bavaria, Art. 44, Sec. 1; see discussion below under "The Executive Branch."

[48] Art. 45 of the French constitution of September 28, 1946, provides that the prime minister-designate must receive a formal vote of confidence in the National Assembly before he can proceed with the formation of his cabinet. Since the German *Laender* have no equivalent to the French President of the Republic, there is no person who can "designate" the prime minister to be. Presumably, direct contacts between party leaders or caucus decisions will produce the persons most likely to form a government.

(*Ministerpräsident*), rather than making him appointive by a chief executive as under the Weimar Republic (Art. 53). Since the provisions have all been closely modelled on the 1919 constitution (Arts. 20–40), the rules of procedure are quite uniform in all regions. Thus the legislatures may compel the presence of a cabinet minister, while the ministers in turn have a right to attend all sessions and committee meetings whether members or not, and to be heard, even though their topic of discussion may not previously have been placed on the agenda. Upon the request of a certain percentage of its members,[49] the *Landtage* may establish investigating committees which are to be guided by the analogous application of the law of criminal procedure—the latter provision being one of the few which might be profitably emulated elsewhere. The legislators have their customary privileges and immunities, and such information as they may gather in the course of their duties is considered privileged; they may not be forced to divulge it in court. Accurate publication of debates may not cause any prosecution or disciplinary action whatsoever.

All *Landtage* have "permanent committees to look after the interests of the legislature when the latter is not in session. However, the Thuringian constitution is unusual in granting its permanent committee the right to pass legislation "when urgently necessary" (Art. 18), to be submitted, however, to the following session of the *Landtag* without delay. Only constitutional amendments are excluded from this sweeping power.

All *Landtage* can be called into extraordinary session by the president of that body, by the Government or prime minister, or upon request by a certain number of members, ranging from one-third to one-fifth. The *Landtage* may be dissolved before their expiration date if a majority of their members so demand.[50] They may also be dissolved by popular referendum;[51] but in Bavaria (Art. 18, Sec. 3) and Wuerttemberg-Baden (Art. 58) 100,000 voters must support the proposal. In Hesse (Art. 114), it is further ordained that in case no Government has received a vote of confidence twelve days after the convocation of a new session of the legislature, the *Landtag* is automatically dissolved.

With the exception of the Soviet zone, all constitutions prohibit

[49] Usually one-fifth.
[50] Not in Wuerttemberg-Baden.
[51] Not in Hesse.

the transfer of legislative power by the *Landtag*—indicating that the incident of Hitler's "Enabling Act"[52] is well remembered. However, all constitutions give considerable freedom to the popular initiative and referendum, providing only that certain matters, such as salary schedules, taxation, and the budget shall not be submitted to a referendum, presumably because of the highly technical character of such legislation.[53] Requirements for a popular initiative range from one-tenth to one-fifth of the total number of qualified voters. In Thuringia, the initiative may also originate with any legal party or democratic organization which shows evidence that it represents at least one-fifth of the qualified voters of the *Land* (Art. 38, Sec. 1).

Once the referendum has been launched in accordance with the constitution, it can be stopped only if the *Landtag* passes the law which the referendum is intended to realize or if the voters reject it. In Bavaria, however, the *Landtag* may submit its own draft to the people together with an original referendum proposal with which it may disagree (Art. 74, Sec. 4.)

Despite unfortunate experiences with the impersonally arithmetical list-system of proportional representation, PR has again triumphed everywhere. To make quite sure that candidates shall be selected by the party bureaucracies and not by the voters, PR has been anchored in all constitutions except that of Baden.[54] In order to prevent the appearance of many small parties, the three *Laender* of the American zone have adopted provisions by which political parties which fail to accumulate a certain minimum percentage of the vote may be deprived of representation.[55] Having thus violated one of the fundamental tenets of PR—the doctrine that all groups of voters must be represented, without achieving the stability, directness, and clear-cut alternatives of the Anglo-American system, this modified PR version merely succeeds in combining the disadvantages of both electoral systems.

[52] "Law for the Relief of Distress of Nation and Reich," March 24, 1933, *Reichsgesetzblatt*, I, p. 141.

[53] Cf. Art. 73, Weimar constitution.

[54] However, the electoral laws of Baden have also introduced the proportional list system.

[55] The Bavarian constitution specifies that parties which fail to receive at least one-tenth of the total vote *shall not* be represented in the Legislature (Art. 14, Sec. 4). Wuerttemberg-Baden does the same, but leaves it to legislation whether such a condition shall be imposed or not (Art. 52). Hesse takes a similar stand, but limits the minimum vote which may be required to five per cent (Art. 75).

V. THE EXECUTIVE BRANCH

The organization of the executive branch is closely modelled after Articles 52–59 of the Weimar constitution. The prime minister (*Minister-praesident*)[56] is more than a *primus inter pares*. He alone is elected by the *Landtag;* the other ministers are appointed by him.[57] It is also stipulated in all new constitutions that the prime minister, like the Reich Chancellor before him, shall determine the broad outlines of government policy. However, under existing legal and political conditions, this cannot be considered very much of a power. While the ministers are responsible to the prime minister, they are also responsible, individually and collectively, to the *Landtag*. Moreover, all constitutions lay down certain rules of procedure for the *Land* cabinet, among them the provision that cabinet decisions shall be made by a majority of ministers. But the greatest deterrent to a single, powerful chief executive is the prevailing multi-party system, which creates coalition governments[58] and in practice makes ministers responsible to their parties rather than to the prime minister or to the *Landtag*.[59]

A peculiar attempt at strengthening and stabilizing the executive was made in Bavaria. While all of the other constitutions merely provide that the *Landtag* shall elect the prime minister, the Bavarian constitution has the *Landtag* elect him for a term of four years (Art. 44, Sec. 1). This was quite obviously an attempt to combine the stability of the American presidency with the responsible character of a parliamentary régime. This conclusion is reenforced by a resolution of the Bavarian *Landtag* stipulating that a vote of non-confidence or censure shall not automatically bring about the resignation of the cabinet. While the first section of Article 44 seems determined to strengthen the position of the exec-

[56] In Baden, *Staatspraesident*.

[57] But usually need the consent of the *Landtag*. In Wuerttemberg-Baden, the prime minister may also dismiss a minister (Art. 70). In Bavaria (Art. 45) and Hesse (Art. 112), the prime minister needs the consent of the *Landtag* for the dismissal of ministers.

[58] In view of the present emergency, there are coalition governments in most German states, even though certain individual parties could command a majority in the *Landtag* without entering into any combination with other groups. Cf. Robert G. Neumann, "The New Political Parties of Germany," in this REVIEW, Vol. 40, p. 749 (1946).

[59] On September 15, 1947, the four Social Democratic ministers in the Bavarian cabinet were forced to resign against their will by a decision of the state committee of their party.

utive, the third section of the same article retracts: "He [the prime minister] must resign when political conditions make impossible, between him and the *Landtag*, coöperation on the basis of mutual confidence."[60]

Just what constitutes a "condition which makes coöperation impossible" is perhaps difficult to say, but one might safely assume that the adoption of a resolution of "no confidence" by the *Landtag* would present a very strong presumption, to say the least, that the above-mentioned "condition" exists. The practical effectiveness of the four-year term must therefore be subject to considerable doubt.[61]

Hesse (Art. 119) and Baden (Art. 94) give their Governments the right to refer back to the legislature for further consideration any law of which the executive disapproves. However, in order to override this suspensive veto, the *Landtag* does not need any larger majority than was necessary in order to pass the law in the first place. In Baden, the executive is allowed one more step in order to prevent the adoption of an obnoxious law: the cabinet whose veto has been overridden by the *Landtag* may submit the bill to a popular referendum for a final decision.[62]

VI. THE ADMINISTRATION OF JUSTICE AND THE QUESTION OF JUDICIAL REVIEW

There are few aspects of German public life into which the perversions of Nazism have made such deep inroads as those of law and justice. The authors of the new German constitutions therefore found it necessary to make certain that a repetition of some of the worst malpractices would not occur—or at least not under constitutional sanction. The Nazis had abrogated the principle that no one shall be tried except on the basis of law (*nulla poena sine lege*).[63] They abolished the provision of the Weimar constitution (Art. 105) according to which no person could be deprived of trial before a competent judge having jurisdiction over him.[64] They established

[60] Art. 44, Sec. 1: "Der Ministerpraesident kann jederzeit von seinem Amt zuruecktreten. Er muss zuruecktreten, wenn die politischen Verhaeltnisse ein vertrauensvolles Zusammenarbeiten zwischen ihm und dem Landtag unmoeglich machen."

[61] The terms of all prime ministers expire automatically at the beginning of the first session of a newly elected *Landtag*.

[62] The emergency powers of the Governments have been discussed under the heading "Civil Liberties and Fundamental Rights."

[63] Cf. Law on the Imposition and Execution of the Death Penalty (lex van der Lubbe), March 29, 1933, *Reichsgesetzblatt*, I, p. 151; Law of June 28, 1935, *Reichsgesetzblatt*, I, p. 839, amending Section 2 of the German Criminal Code.

[64] Decree of November, 20, 1938, concerning the establishment of the *Sondergе-*

special courts,[65] not bound by law, whose grim reaping made the Court of Star Chamber look like a board of welfare. The Nazis also deprived the bench of all security and independence, converting it into a blind tool of dictatorship.[66]

The new constitutions undertake to change all that. There is to be no punishment except on the basis of law; no person is to be tried by any judge other than the regularly appointed one; nor is anyone to be deprived of his day in court. The already mentioned quasi-habeas corpus would also seem to make "administrative" punishment and imprisonment without trial or sentence difficult.[67] All "special" courts are expressly forbidden, and in the Western zones the bench has again been made irremovable during good behavior. An exception to this rule is found in the constitution of Hesse (Art. 127), which provides that the Supreme Constitutional Court (*Staatsgerichtshof*) may remove a judge from the bench upon the request of the *Landtag* "if he does not fulfill certain expectations." These expectations, outlined in Section 1 of the same article, are the same upon which his original appointment is contingent, namely, "the expectation that he will exercise the functions of his office in the spirit of democracy and social understanding."[68]

In the Soviet zone of occupation, the position of the judge is less secure. Article 47, Sec. 1, of the Thuringian constitution reads: "Judges are independent in their administration of the law and subject only to the law."[69] This means that the judge shall be in-

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richte, Reichsgesetzblatt, I, p. 1632.

[65] Law concerning the People's Court (*Volksgerichtshof*) of April 18, 1936, *Reichsgesetzblatt*, I, p. 369.

[66] Law on the Reëstablishment of the Professional Civil Service, April 7, 1933, *Reichsgesetzblatt*, I, p. 175, later replaced by the German Civil Service Act, January 26, 1937, *Reichsgesetzblatt*, I, p. 39. Decree on the Coördination of the Judiciary, August 20, 1942, *Reichsgesetzblatt*, I, p. 535. For the practice of issuing periodic directives to judges, cf. speech by Minister of Justice Otto Thierack, *Deutsche Justiz*, October 26, 1942; for a brief description of this unique method of telling the judges what and how to decide, cf. John Herz, "German Administration Under the Nazi Régime," in this REVIEW, Vol. 40, p. 701 (1946).

[67] This is to prevent the return of "Protective Custody" and "Judgments by the Good Sense of the German People." Cf. law of June 28, 1935, *loc. cit.*

[68] However, a judge may still be dismissed for cause by ordinary judicial decision. (Art. 128). Frequently this is accomplished by a special "In-Service Court" (*Dienststrafhof*); cf. Art. 88, constitution of Wuerttemberg-Baden.

[69] "Die Richter sind in ihrer Rechtsprechung unabhaengig und nur dem Gesetz unterworfen."

dependent merely in the exercise of his office, i.e., not bound by superior orders, but nothing is said about the personal independence of judges or their irremovability except for cause.[70] That this was not merely an oversight or unhappy wording is pointed out by an authoritative commentator,[71] who observes: "The principle according to which judges are appointed for life . . . contradicts the demands for a democratization of justice, and favors the development of a class of judges remote from life and hostile to the interests of the people."[72]

It is clear that the doctrine of the absolute superiority of the legislature over all other branches of the government cannot easily be reconciled with the doctrine of judicial review. Consequently, in the Soviet zone, where legislative hegemony is extolled, judicial review is expressly rejected. "The courts," declares Schultes,[73] "shall not be set up for the purpose of controlling the highest exponent of the country's democratic will."

The Thuringian constitution contains a provision which to the superficial observer might look like a form of constitutional, though not judicial, review (Art. 43, Sec. 2). It establishes a Constitutional Examination Committee (*Verfassungsprüefungsausschuss*) consisting of the president of the *Landtag*, the three vice-presidents, two judges—one from the highest regular court in the *Land* (*Oberlandesgericht*) and one from the highest administrative court (*Oberverwaltungsgericht*)—as well as a representative of the law faculty of Jena University. The committee examines laws at the request either of the cabinet acting in coöperation with the judiciary committee of the legislature, or of one-third of the members of the *Landtag*. The committee's decisions are final. Such a committee might possibly satisfy the famous demand of Abbé Siéyès for a "constitutional jury."[74] But as an instrument for the protection of the constitution against legislative infringement, it is as ineffectual as its modern French counterpart.[75] If even courts cannot free

[70] Cf. Bavaria, Art. 87; Hesse, Art. 127; Wuerttemberg-Baden, Art. 88.

[71] Schultes, *op. cit.*, p. 16.

[72] This argumentation is quite reminiscent of Nazi ideas propagated for the similar purpose of making the bench pliable. Cf. E. R. Huber, *Verfassungsrecht des Grossdeutschen Reiches* (Hamburg, 1937/39), pp. 276–281.

[73] *Op. cit.*, p. 15.

[74] A. Esmein, *Éléments de Droit Constitutionnel Français et Comparé* (8th ed., by H. Nézard, Paris, 1927–28), Vol. I, p. 638.

[75] Constitution of 1946, Arts. 91–93.

themselves entirely from partisanship, it stands to reason that a committee of this sort would be bound to become a foot-ball of politics. Moreover, as this committee is dominated (four to three) by representatives of the legislature, it is not likely that a law passed by that same legislature will be held unconstitutional by its foremost representatives—especially when one considers the high degree of party-discipline customary in Germany, and especially in the Soviet zone.[76]

By contrast, the constitutions of the Western zones are most explicit in their devotion to the principle of judicial review. Nowhere is final decision upon the constitutionality of a law or decree vested in an ordinary court; everywhere it is reserved for a Supreme Constitutional Court, sometimes called Constitutional Court (*Verfassungsgerichtshof*), sometimes Court of State (*Staatsgerichtshof*).[77] Whenever an ordinary court entertains doubts about the constitutionality of a law, it must refer the question to the Supreme Constitutional Court;[78] and the decisions of this tribunal are binding and have the force of law. With this arrangement, which constitutes a very considerable step forward from the Weimar Constitution,[79] the framers hoped to emulate the experience and practice of the United States, and expected to erect a formidable barrier against unconstitutional arbitrariness.

While the American and Western German systems show a considerable degree of structural similarity, there are a number of factors in the German set-up which cause the observer to be less sanguine in his prediction of success. Much has been made of the differences between the Anglo-American and the (Roman) Civil Law systems, and it has been argued that no real judicial review

[76] One might also question the effectiveness of review based on general rationalization rather than on a concrete case.

[77] Not to be confused with the *Hohe Staatsgerichtshof* (Baden constitution, Art. 112), which is a court for the trial of impeachments. It is differently composed.

[78] The Supreme Constitutional Court, in turn, will concern itself only with the constitutional question involved. Final disposition of the case lies with the regular courts.

[79] The Weimar constitution envisaged a *Staatsgerichtshof* (Art. 108; also Arts. 15, 18, 170, 171), which was established by law of July 9, 1921, *Reichsgesetzblatt*, p. 905. The *Staatsgerichtshof* was actually a court of conflicts and arbitration rather than a constitutional court in the American sense. It exercised no judicial review. The Supreme Court (*Reichsgericht*) did decide on November 4, 1925, that it was competent to pass on the constitutionality of a *Reich* law (*Entscheidungen des Reichsgerichts in Zivilsachen*, III, p. 320), but that decision remained without practical consequences.

could ever emerge without the operation of *stare decisis*. However, this difficulty is probably more apparent than real, for under the Common Law system the judge is not nearly as tightly bound by precedent as his Civil Law colleague presumes; nor is the Civil Law judge as free from the binding power of past judicial decisions as is frequently believed in English-speaking countries. But the Anglo-American system gives the judge an unexcelled position of independence and majesty which enables him to sit in judgment upon the powers of government. Where the judge is used to being merely a narrow expositor of the legislature's and executive's *ipsissima verba*, as is customary with German judges, the chances for a successful habit of judicial review are not auspicious. There is no getting around the fact that the exercise of judicial review as practiced in the United States is, in its last analysis, a matter of philosophy rather than of law. Judicial review can grow, therefore, only where the judges have a philosophy—and a democratic philosophy at that—and where they have the courage to apply it despite possible frowns from all quarters. Thus far, most German judges before and after Hitler have given little evidence of either.[80]

The Bavarian constitution provides that all members[81] of the Supreme Constitutional Court shall be professional judges (Art. 68, Sec. 2b).[82] A similar provision is found in the constitution of Baden (Art. 112). In Wuerttemberg-Baden (Art. 91) and Hesse (Art. 130), the Court is composed partly of regular judges from the ordinary and administrative courts, and partly of other persons elected by the *Landtag*, but not from among its members.[83] While the appointment of professional judges might seem a more desirable method in principle, it should be remembered that in Germany a judge has little contact with the general economic and political life of the country. Quite different from the United States, he selects his calling when graduating from law school. From that time on, he moves

[80] During the lifetime of the Wiemar Republic, the courts showed great leniency toward the Rightist enemies of the democratic state. In those days, more courage was needed to uphold the state than to oppose it.

[81] One of the presidents of the *Oberlandesgerichte* and eight judges, three of whom must be from the Administrative Court.

[82] Only for purposes of judicial review. For the purpose of impeachment trials (Art. 61), or consideration of unconstitutional abridgment of civil rights by the executive branch (Art. 66), the court has a different composition. This unnecessarily complicated system has been faithfully copied from the law of July 9, 1921, *loc. cit.*

[83] Cf. Article 140 of the Austrian constitution of 1920.

in the rarified atmosphere of the judiciary and is rarely exposed to the kind of problems that assail lesser men. He is trained to look upon law as pure, all-inclusive rationalization, and in particular as divorced from such "unscientific" subjects as sociology or economics.[84] Justice Oliver Wendell Holmes' famous dictum, "the life of law has not been logic; it has been experience," would arouse only consternation among most German judges.[85]

On the other hand, it seems questionable whether the election of non-judges would greatly further the idea of judicial review. Considering the patterns in which political life manifests itself in Germany, these men would certainly be selected primarily for their party affiliations. Now it is true that similar considerations influence the selection of Supreme Court justices in the United States. But, having general confidence in the impartiality of the bench, the people of this country will usually consider its highest judges personally disinterested.[86] Where judges are selected[87] by a political body primarily for their party regularity, popular imagination will never consider them impartial and disinterested, even though they may speak with angels' tongues and dispense Solomonic justice.

VII. ECONOMIC PROVISIONS

The economic and financial chapters of the new constitutions show the clash of ideologies most clearly. Since no political ideology had its way completely, it was apparently impossible to agree upon clear legal definitions. Instead, some of the most important questions are cloaked in a nebulous garment of high moral purpose which enabled all parties to claim victory for their particular principles, without in fact achieving anything at all. Private property is "protected,"[88] but when it is used in a manner harmful to society it may be controlled or taken away. All constitutions allow for state planning and some socialization, especially of utilities and transportation, and provide for land reform. The Hessian constitution

[84] This is not true of legal scholarship. Men like Otto von Gierke or Rudolf von Ihering have not been found lacking in breadth of vision.

[85] Oliver W. Holmes, *The Common Law* (Boston, 1881), p. 1.

[86] Cf. Carl J. Friedrich, *Constitutional Government and Democracy* (rev. ed., Boston, 1946), p. 230.

[87] Hesse (Art. 130) and Wuerttemberg-Baden (Art. 91) have their respective *Landtage* elect the judges of the Supreme Constitutional Court for certain periods with the right of reëlection.

[88] "Within the confines of the law" as usual.

is the most extreme. It provides (Art. 41, Sec. 1) for the nationalization of specific industries,[89] while other businesses[90] are to be placed under strict state control. Compensation is to be paid according to "social considerations," not value. In case of "misuse"—which is not further defined—confiscation is to be applied."[91] Trusts and similar combinations are outlawed.

With regard to social security and related subjects, the constitutions go into many details. They guarantee the eight-hour day and provide for collective bargaining and the right to strike (within the confines of the law), but sometimes prohibit lockouts.[92] Child labor is prohibited, and the participation of labor in management is assured.[93] Legislation for unemployment compensation, old age benefits, disability payments, and paid vacation is required. The majority of these provisions are, however, not self-executing but require detailed legislation, and there seems to be no legal way in which the passage of such legislation could be forced upon an unwilling legislature.

VIII. AMENDMENTS

All of the constitutions are uniform in requiring a two-thirds majority in the *Landtag* for proposing an amendment; for its adoption, approval of the people in a popular referendum is necessary. Only in the Soviet zone does a majority of two-thirds in the *Landtag* have the power to enact amendments without recourse to a referendum.[94]

An important innovation is the rule contained in many of these documents that duly ratified amendments must be shown in the text of the constitution or appear in an appendix. This is to prevent the recurrence of the practice of enacting so-called "amending laws" (*Verfassungsaendernde Reichsgesetze*). There were laws containing unconstitutional material, passed by a majority sufficiently

[89] Mining, iron and steel, power, rail transportation (including street-car lines and electric buses powered by overhead lines).

[90] All big banks and insurance companies, as well as those industries mentioned in note 89 above whose seat is not in Hesse (Art. 41, Sec. 2).

[91] Art. 39, Par. 4: "Die Entschaedigung fuer das in Gemeineigentum ueberfuehrte Vermoegen wird durch das Gesetz nach sozialen Gesichtspunkten geregelt. Bei festgestelltem Missbrauch wirtschaftlicher Macht ist in der Regel die Entschaedigung zu versagen."

[92] Constitution of Hesse, Art. 29.

[93] Through shop stewards.

[94] However, the Thuringian constitution (Art. 39) allows amendment by referendum as well.

large to amend the constitution (under Art. 76), and amended the constitution in fact, but did not appear in the text of the fundamental law, hence causing great confusion as to the actual state of constitutional law.[95]

The constitutions of the Western zones[96] contain provisions according to which amendments tending to change the fundamental democratic character of the state shall not be passed.[97] In case of doubt, the Supreme Constitutional Court shall decide whether or not a proposed amendment is democratic. A peculiar version is to be found in the constitution of Wuerttemberg-Baden. Article 85, Section 1, forbids amendments "contrary to the spirit of the constitution," and Sections 2 and 3 fix the manner in which amendments may be adopted. But Section 4 decrees that "Sections 2, 3, and 4 cannot be amended." Does this mean that Section 1 can be amended? The deliberate elimination of Section 1 from mention in Section 4 would seem to answer the question in the affirmative. But would an amendment to Section 1 be "contrary to the spirit of the constitution" and thus inadmissible? This is an interesting question, and one might well wonder why the framers of this constitution left such a loop-hole.

IX. CONCLUSIONS

The new constitutions of Germany are certainly not flawless. While some of the lessons of Weimar have been learned, others have not. Moreover, some of the constitutions show illogical arrangement[98] and evidence of haste.[99] The American observer, used to the classic draftsmanship of his own constitution, may be repelled by the verbosity and pamphleteering character of some of the German provisions. Yet these glaring faults should not blind us to the fact that an important step forward has been taken. A country like

[95] Cf. Karl Loewenstein, "Government and Politics in Germany," in *Governments of Continental Europe* (ed. by James T. Shotwell, New York, 1940), p. 391. Cf. also a searching study by the same author: *Erscheinungsformen der Verfassungsaenderung* (Tuebingen, 1931).

[96] Except that of Bavaria.

[97] The Hessian constitution (Art. 150) is especially emphatic on this point: "Proposals for amendments violating [the democratic spirit of the constitution] shall not be brought to a vote. If passed nevertheless, they shall not be promulgated. If promulgated nevertheless, they shall not be observed."

[98] Especially in the Bavarian constitution.

[99] According to reliable reports, this may be partly due to pressure for speed exerted by Military Government in the U. S. zone.

England, where the tradition of personal freedom is deeply ingrained, may easily do without a single document embodying the supreme law of the land. But where liberty is not so secure, a strong constitution can give added strength to the friends of democracy and help to confound its enemies. True, a constitution, no matter how well drafted, cannot in itself stop dictatorship. The new constitutions alone will not ensure the victory of democracy in Germany. Yet, it is safe to say that without them democracy would be far worse off.

Germany has now received her second chance to make constitutional government work. Her experiences with these *Laender* constitutions will have a great influence on the organization of larger regional units and on the conception of an eventual constitution for a future united Germany. The world will certainly watch the new experiment and draw its own conclusions.

CONSTITUTIONAL LAW IN 1946–47

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1946

ROBERT E. CUSHMAN
Cornell University

Fred M. Vinson took his seat as Chief Justice of the United States at the beginning of the 1946 term; there were no other changes in the personnel of the Court. Mr. Justice Jackson returned to the bench after his year's absence in Nuremberg. Continuing disagreement among the justices was shown by the fact that in twenty-three cases four justices dissented, and in twenty-four cases three dissented. The number of concurring opinions filed remained high.

A. QUESTIONS OF NATIONAL POWER

1. COMMERCE POWER

"Death Sentence" Provision of the Public Utility Holding Company Act. In 1938, in Electric Bond & Share Co. v. Securities and Exchange Commission,[1] the Court held valid the provisions of the Public Utility Holding Company Act of 1935 which required holding companies to register with the Commission and forbade them to use the mails or interstate commerce if they failed to do so. The Court did not, however, pass upon the validity of the famous "death sentence" provision of the statute which provided that as soon as practicable after January 1, 1938, the Securities and Exchange Commission should "require by order, after notice and an opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to insure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system."

In American Power & Light Co. v. Securities and Exchange Commission,[2] the Court, without dissent, held this "death sentence" provision constitutional. The case arose from an order of the Commission directing the dissolution of the American Power & Light Company and the Electric Power & Light Corporation as holding companies whose continued existence violated the standards stated in the "death sentence" provision. The Court's opinion covered the following points: First, the provision is

[1] 303 U. S. 419, 1938. [2] 329 U. S. 90, 1946.

valid under the commerce clause. "Congress, of course, has undoubted power under the commerce clause to impose relevant conditions and requirements on those who use the channels of interstate commerce so that those channels will not be conduits for promoting or perpetuating economic evils." Second, the Court found no unconstitutional delegation of legislative power to the Commission; sufficiently clear standards are set up for its guidance. Third, there is no denial of due process in the procedures by which the Commission is required to act under the "death sentence" provision, or by which it did act in the present case. Fourth, the Commission acted within the range of its statutory discretion in determining that dissolution of the two holding companies was necessary in order to meet the standards established by Congress. The act plainly contemplates dissolution as one of the available methods of accomplishing the purpose of the act. The Commission was not, therefore, exceeding its power because less drastic alternative methods might have been tried. The Commission considered alternative plans and rejected them.

Federal Power Over Pipelines Operated As Private Carriers. In a five-to-four decision, the Court held in Champlin Refining Co. v. United States[3] that the Interstate Commerce Commission could validly require a pipeline operated by the company for the exclusive transportation of its own products, and having no connection with other pipelines, to furnish information to be used in valuing the line. The owner of the line was clearly engaged in interstate commerce, and the power of Congress to regulate it is not dependent upon its having the technical status of being a common carrier for hire. The power extends to private carriers. There is no denial of due process in requiring the information asked for by the Commission. The dissent rested on the ground that the Interstate Commerce Act was not intended by Congress to extend federal power over private carriers.

2. FEDERAL BILL OF RIGHTS

Search and Seizure Incident to an Arrest. In Harris v. United States,[4] the Court substantially limited the scope of the protection extended by the Fourth Amendment against unreasonable searches and seizures. F.B.I. agents entered the apartment of Harris and arrested him on the authority of two warrants charging him with federal crimes connected with two fraudulent check transactions. Harris was handcuffed, and, over his protest, the agents searched his apartment with minute care for five hours, ostensibly to find the forged checks. In the bottom of a drawer they found a sealed envelope containing Notice of Classification cards and Registration Certificates bearing the stamp of the local draft board. Upon this evidence, Harris was convicted of violating the Selective Service Act. He

[3] 329 U. S. 29, 1946. [4] 331 U. S. 145, 1947.

contended that the cards and certificates were obtained by an unlawful search and seizure and that his conviction based upon them was, therefore, invalid. A majority of five justices, speaking through Chief Justice Vinson, held the search to have been lawful and the conviction based on the fruits of it valid. Search and seizure incident to a lawful arrest have long been held valid, and such search may, under appropriate circumstances, extend "beyond the person of the one arrested to include the premises under his immediate control." Here the four-room apartment was under Harris's immediate control. The search was not unreasonable. It was not a general exploratory search, but one aimed at discovering the missing forged checks. The objects discovered were the property of the government, and Harris's retention of them was a serious and continuing crime. "A crime was thus being committed in the very presence of the agents conducting the search. Nothing in the decisions of this Court gives support to the suggestion that under such circumstances the law-enforcement officers must impotently stand aside and refrain from seizing such contraband material. If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement officers of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated." The Chief Justice then observes: " . . . we should not permit our knowledge that abuses sometimes occur to give sinister coloration to procedures which are basically reasonable."

Justices Frankfurter, Murphy, Jackson, and Rutledge dissented, and the first three wrote separate opinions. The dissenting justices allege, with supporting references to early history, that the search and seizure in this case comprise exactly the kind of official abuse against which the Fourth Amendment has been supposed to give protection. To extend the scope of the search which may be made incident to a lawful arrest to include a man's entire premises, assuming he is arrested at home, destroys all limitations upon the right to search. In fact, the investigating officers will, under the rule of the Court, be able to make a much broader search than they could under the authority of a search warrant. Such a warrant would require them to state what they are looking for and to describe the premises to be searched. Here they need do neither of these things. The dissenting justices are clearly disturbed by the practical consequences of the new rule. This is clearly stated by Mr. Justice Jackson. "The decision will certainly be taken in practice as authority for a search of any home, office, or other premises if a warrant can be obtained for the arrest of any occupant and the officer chooses to make the arrest on the premises. It would also appear to sanction a search of premises even though the arrest were for the most petty of misdemeanors. It leaves to the arresting

officer choice of the premises to be searched in so far as he can select the place among those in which the accused might be found where he will execute the warrant of personal arrest. Thus, the premises to be searched are determined by an officer rather than by a magistrate, and the search is not confined to places or for things particularly described in a warrant, but, in practice, will be as extensive as the zeal of the arresting officer in the excitement of the chase suggests. Words of caution will hedge an opinion, but they are not very effective in hedging searches."

Political Rights of Federal Employees. Section 9(a) of the Hatch Act provides: "No . . . employee in the executive branch of the Federal Government . . . shall take any active part in political management or in political campaigns," and requires that any person violating this section "shall be immediately removed from the office or position held by him." A group of federal employees belonging to the United Public Workers of America, alleging that they desired to engage in political activity, sought a declaratory judgment holding the section of the act invalid.[5] In addition, one Poole had actually violated the act and sought an injunction to prevent his removal from office. A divided Court held the act constitutional. However, they dealt only with Poole's case, since to render the declaratory judgment asked for would be essentially to decide a case not properly before the Court for decision. The other plaintiffs had not indicated the kind of political activity in which they wished to engage, and to pass upon their right to do so would amount to rendering an advisory opinion. Poole, however, was a roller in the Mint, and was at the same time serving as a ward executive committeeman of a political party, as well as a worker at the polls and a paymaster for other party workers.

It was strongly urged that the statute violates the First Amendment by denying to federal employees freedom of speech and press necessarily a part of political activity. It was especially urged that this was true because the prohibition against political activity was not limited to what federal employees might do during working hours. The Court did not take this objection very seriously. Mr. Justice Reed, for the majority, called attention to the fact that Congress has for many years restricted the political activity of federal employees by forbidding them to contribute to political campaign funds. It has never been seriously questioned that such restrictions fall within the range of Congressional power to provide for the efficiency of the federal service. In this area Congress has wide discretion; it is not obliged to content itself with imposing the lightest possible restrictions upon political activity. "The argument that political neutrality is not indispensable to a merit system for federal employees may be accepted. But because it is not indispensable does not mean

[5] United Public Workers v. Mitchell, 330 U. S. 75, 1947.

that it is not desirable or permissible." Congress may have decided that "government employees are handy elements for leaders in political policy to use in building a political machine," and could properly take measures to prevent such results.

The prohibition of the Hatch Act is not, however, limited to employees on the federal payroll. Section 12(a) provides: "No officer or employee of any state or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal Agency shall . . . take any active part in political management or in political campaigns." Under the authority of this section, the United States Civil Service Commission ordered the removal from office of a member of the highway commission of Oklahoma, who was also serving as chairman of the Democratic state central committee and was engaged in organizing for the committee a "victory dinner" for the purpose of raising party funds. The Court upheld the removal.[6] It rejected the contention of the state of Oklahoma that Congress was interfering in state affairs in violation of the Tenth Amendment. It emphasized that Congress had the right to determine under what conditions the states could receive federal loans or grants-in-aid. Oklahoma was not compelled to dismiss the officer in question, since it could pursue the alternative course of refusing to accept the federal funds in the administration of which he was engaged. "Oklahoma chose not to remove him. We do not see any violation of the state's sovereignty in the hearing or order. Oklahoma adopted the 'simple expedient' of not yielding to what she urges is federal coercion."

Exclusion of Women from Juries. In Thiel v. Southern Pacific Company,[7] the Court held that the systematic exclusion of wage-earners from a federal jury violated the jury trial requirement of the Bill of Rights. It emphasized that the American tradition of jury trial "contemplates an impartial jury drawn from a cross-section of the community." This principle was applied in Ballard v. United States[8] to order retrial in a case in a federal court in which women had been systematically excluded from the jury panel. The trial was held in California. In California, women are eligible for jury service under local law. Congress has provided that jurors in a federal court shall have the same qualifications as those of the highest court of law in the state. Women were therefore eligible for jury service in federal courts in California. Their systematic exclusion from the jury panel therefore violates the principle stated in the Thiel case that a jury must be drawn from a cross-section of the community. It is a departure from the scheme of jury selection provided for by Congress. The facts

[6] Oklahoma v. United States Civil Service Commission, 330 U. S. 127, 1947.
[7] 328 U. S. 217, 1946. [8] 329 U. S. 187, 1946.

of this case made it unnecessary for the Court to answer the question whether the doctrine of the Thiel case would forbid on constitutional grounds the exclusion of women from federal juries in states whose laws do not make women eligible for jury service in state courts. Four justices, including Chief Justice Vinson, dissented in the case.

3. TREASON

In Haupt v. United States,[9] the Court upheld the conviction, on a charge of treason, of the father of one of the Nazi saboteurs who had been executed in the summer of 1942. The evidence presented indicated that Haupt, with knowledge of his son's purpose to engage in sabotage, had harbored and sheltered him for several days, had helped him get a job in a factory which was making the Norden bombsight, and had arranged for the purchase of, and helped pay for, an automobile for the son's use. These acts of the father constituted overt acts which gave aid and comfort to the enemy. This distinguished the case from that of Cramer,[10] whose conviction of treason had been set aside by the Court on the ground that while he had talked and drunk with another of the Nazi saboteurs, there was no evidence that he had rendered him aid and comfort. The chief issue in the present case was whether the constitutional test had been met which requires two witnesses to the same overt acts. While there were two witnesses to support each of the three charges stated above, the evidence of these witnesses was not identical. One had seen one thing indicating that the act had been committed, while another had seen something else. Speaking through Mr. Justice Jackson, the Court disposed of this objection by saying: "While two witnesses must testify to the same act, it is not required that their testimony be identical. Most overt acts . . . are . . . courses of conduct made up of several elements." Nor was the Court impressed by the argument that Haupt had merely behaved as a normal father would do under similar circumstances. "It is argued that Haupt merely had the misfortune to sire a traitor and all he did was to act as an indulgent father toward a disloyal son. In view, however, of the . . . defendant's own statements . . . the jury apparently concluded that the son had the misfortune of being a chip off the old block . . . "

4. SUPREMACY OF NATIONAL LAW

Eminent Domain to Condemn Municipal Public Buildings. So far as is known, the federal government has never attempted to take by eminent domain property being used by a state or local government for public governmental purposes over the protest of that government. The case of United States v. Carmack[11] does not present precisely this situation, but

[9] 330 U. S. 631, 1947.
[10] Cramer v. United States, 325 U. S. 1, 1945.
[11] 329 U. S. 230, 1946.

one very close to it. The government here condemned a plot for a post-office on which stood buildings used by the city of Cape Girardeau, Missouri, for a court house, city hall, and municipal band-stand. The city, however, did not resist the condemnation, since it was receiving from the government the former post-office site and was apparently satisfied with the bargain. The plot in question, however, had been conveyed to the city in trust for public purposes back in 1820, and a survivor of the original grantor appeared to contest the condemnation. The Court unanimously upheld the government's right to condemn. The opinion by Mr. Justice Burton did not come to grips with the issue which would have been presented had the city owned the property outright and resisted the condemnation. But the language of the opinion appears to imply that these conditions would have made no difference. "It makes little difference that the site here sought to be condemned is held by the city in trust instead of in fee. The city government is not resisting the condemnation." The decision rests squarely upon the doctrine of the supremacy of national law. It relies heavily upon the case of Kohl v. United States,[12] in which the Court held that the federal government was fully empowered to condemn private property within a state without calling upon the state for assistance in doing so.

State Courts Required to Enforce Federal Penal Statute. Testa v. Katt[13] reversed a decision of the supreme court of Rhode Island which held that the courts of that state could not validly enforce the penal provisions of the Emergency Price Control Act. It will perhaps be recalled that the Supreme Court's decision in the Second Employers' Liability Cases in 1912,[14] that the courts of Connecticut could not refuse to take jurisdiction in cases arising under the Federal Employers' Liability Act when that act conferred such jurisdiction, had aroused a constitutional controversy of impressive proportions. The very brief opinion in the present case, which attracted no public notice, is evidence of how firmly the principle of the supremacy of national law is now established and accepted. The Price Control Act provided that federal district courts should have jurisdiction to enforce the act "concurrently with state and territorial courts." The supremacy clause of the Constitution deprives the states of any right to refuse to enforce a law validly passed by Congress if Congress directs them to do so.

The California Tidelands Case. In United States v. California,[15] the government, in an original action in the Supreme Court, asserted exclusive ownership of the Pacific Ocean and the lands under it to a distance of three miles from shore, and challenged the validity of acts of the state of

[12] 91 U. S. 367, 1876.
[13] 330 U. S. 386, 1947.
[14] 223 U. S. 1, 1912.
[15] 332 U. S. 19, 1947.

California by which leases had been given to private companies to take petroleum, gas, and other mineral products from these tidelands. With Justices Reed and Frankfurter dissenting, the Court held that the United States enjoys the exclusive rights of ownership and control over these tidelands. The opinion of Mr. Justice Black bases this federal sovereignty partly upon considerations of national security and partly upon the well established principle of international law recognizing national control within the three-mile limit. The Court further holds that the United States has not forfeited these important rights by its failure formally to assert them and to make active use of them. The only solace to the states lies in the Court's observation: "But beyond all this we cannot and do not assume that Congress, which has constitutional control over government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission."

5. INTERPRETATION OF FEDERAL STATUTES

Several cases involving the construction of federal statutes overshadowed in interest and importance many of the constitutional issues which came before the Court.

Perhaps the most notable of these was United States v. United Mine Workers of America,[16] in which the government enjoined a coal strike and punished the United Mine Workers and John L. Lewis for contempt of court for violating the injunction. In 1946, under the so-called Krug-Lewis Agreement, the government acquired authority to operate most of the coal mines. Lewis demanded new terms for the miners which, after conference, were rejected. Thereupon he terminated the agreement against the denial by the government of his right to do so. Under the prevailing policy of the United Mine Workers of "no contract, no work," this was tantamount to a strike order, and the government sought and obtained a temporary restraining order pending a disposition of the legal issues involved. The miners, under Lewis's direction, went ahead with the strike and were accordingly charged with contempt of court. They were found guilty of both criminal and civil contempt. Lewis was fined ten thousand dollars, and the union three million, five hundred thousand dollars. The Supreme Court upheld the convictions. In an opinion by Chief Justice Vinson, the Court held that the anti-injunction provisions of the Clayton Act and the Norris-LaGuardia Act did not prevent the issuance of an injunction in this case, since those statutes were intended by Congress to apply only in cases where strikes were threatened against private employers and not against the government. The Court went further to say that under any circumstances the district court had the power to issue its

[16] 330 U. S. 258, 1947.

temporary restraining order in order to preserve existing conditions while it determined its own authority to issue an injunction. The Court decided, however, that the fine on the union was excessive and reduced it to seven hundred thousand dollars, contingent upon the union's complying with the district court's order within five days.

Another widely publicized case was United States v. Petrillo.[17] In 1946, Congress amended the Federal Communications Act by adding a provision as follows: "It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel, or constrain, or attempt to coerce, compel, or constrain, a licensee to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; . . . " James C. Petrillo, president of the American Federation of Musicians, and the one against whom the statute was directed, was indicted in a federal district court for forcing a broadcasting company to hire more musicians than were actually needed. The district court dismissed the indictment on the ground that the statute was unconstitutional, and the government took a direct appeal under the Criminal Appeals Act. The Supreme Court held the statute valid. It rejected the contention that the statute was so vague in its language as to violate the requirements of due process of law. It had been urged that the phrase "number of employees needed by such a licensee" was not sufficiently definite so that one could know whether he was violating the statute or not. The Court concluded: "We think the language Congress used provides an adequate warning as to what conduct falls under its ban." Nor does the statute violate the requirement of equal protection of the laws, embodied by implication in the due process clause of the Fifth Amendment, by singling out the radio industry for this special restriction. The Court refers with approval to the long-established doctrine that Congress may undertake to cure some evils without curing them all. Attacks upon the statute which were grounded on the First and Thirteenth Amendments, and alleged invalid restrictions upon the right to picket and to strike, were not considered by the Court, since the case had not gone to trial and there was not sufficient factual basis for dealing with these issues.

In Packard Motor Company v. N.L.R.B.,[18] the Court upheld an order of the Board extending the benefits of the Wagner Act to foremen. It had been alleged that foremen were not employees within the meaning of the statute, and the company had accordingly refused to bargain with the foremen's union. Mr. Justice Jackson, speaking for a majority of five,

[17] 332 U. S. 1, 1947. [18] 330 U. S. 485, 1947.

declared: "That these foremen are employees . . . is too obvious to be labored." The mere fact that in certain matters the foremen represented the interests of the employers does not prevent them from having important interests of their own as employees. Four justices dissented.

A novel and important order of the Interstate Commerce Commission was upheld by the Supreme Court in New York v. United States.[19] The Commission, after elaborate investigation, concluded that the rates established in the various rate districts in the country operated to discriminate adversely against the South, Southwest, and West. This had long been a subject of bitter complaint in the South, where it had been strongly contended that the industrial and economic development of the area was retarded by the high freight rates established by the Commission in earlier orders. The Commission accordingly ordered a ten per cent reduction in the freight rates of the Southern, Southwestern, and Western areas and a ten per cent increase in the rates in the Northeast. The Supreme Court sustained the order on the ground that Congress had authorized the Interstate Commerce Commission to establish rates which were not discriminatory. Inter-regional discrimination was held to be included in this mandate. Justices Frankfurter and Jackson dissented. The latter's attack was directed against the mandatory increase of freight rates in the Northeast, and was stated in these words: "This additional assessment is in no sense compensation. . . . It is really a surtax . . . added solely to increase shipping costs in the [Northeast] . . . for the purpose of handicapping its economy and in order to make transportation cost as much there as it does in areas where there is less traffic to divide the cost."

Cleveland v. United States[20] extended the provisions of the Mann Act to a Mormon who transported one of his plural wives across a state line. The Court has, of course, long since abandoned any interpretation of the Mann Act which would limit it to commercialized prostitution.

B. QUESTIONS OF STATE POWER

1. DUE PROCESS OF LAW

Religious Liberty. Virtually all of the recent cases in which issues of religious liberty have been involved have arisen from the efforts of the Jehovah's Witnesses to remain free from any type of secular control. In Everson v. Board of Education,[21] however, the Supreme Court faced an entirely different issue concerning the legal status of religion, and dealt with it in an opinion which may have far-reaching effects. Here, as in many of the earlier cases concerned with religious liberty, the Court divided five to four.

[19] 331 U. S. 284, 1947.
[20] 329 U. S. 14, 1946.
[21] 330 U. S. 1, 1947.

The Everson case arose under a New Jersey statute which authorizes local school districts to make rules and contracts for the transportation of children to and from schools. The Board of Education of the town of Ewing, New Jersey, in this case authorized reimbursement to parents of money spent by them for the bus transportation of their children on regular buses operated by the public transporation system. Catholic parents were reimbursed in this way for the cost of having their children ride by public bus to and from parochial schools. These parochial schools give their students, in addition to secular education, regular religious instruction. The superintendent of the school is a Catholic priest. Everson brought a taxpayer's action to restrain this reimbursement of Catholic parents. He alleged that such payments violated due process of law by using money raised by taxation for the benefit of private individuals, and secondly, that the payments amounted to state support of schools maintained by the Catholic Church. The opinion of the Court was written by Mr. Justice Black. He rejects the contention that private property was taken through taxation and devoted to a private purpose. The New Jersey legislature had decided that it is a public purpose by which the public interest will be served to pay for the transportation of school children to their schools, whether they be public or private schools. If it is supporting a private interest to transport children to a parochial school, it would be equally so to transport them to any other non-public school. "It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose."

The crucial issue in the case is, of course, the second one, namely, whether the New Jersey statute can be attacked as a "law respecting the establishment of religion." It is admitted that the prohibition of the First Amendment against an establishment of religion is now binding upon the states through the operation of the Fourteenth Amendment. The Court reviews at some length the history of this clause. While apparently recognizing that the issue is a close one, the Court concludes: "We cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools." While this policy does indirectly aid Catholic parents and parochial schools, this is only its indirect result. The First Amendment merely requires a state to be "a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them." The Supreme Court itself recognized in Pierce v. Society of Sisters[22] the constitutional right of parents to send their children

[22] 268 U. S. 510, 1925.

to private and parochial, rather than public, schools. The present legislation neither supports parochial schools nor gives them money. It "does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools. The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here."

Mr. Justice Jackson dissented in an opinion in which Mr. Justice Frankfurter concurred. He emphasizes the degree to which the parochial school forms a vital part of the Roman Catholic Church and is dominated by it. He concludes, therefore, that to render tax aid to a parochial school cannot be distinguished from rendering tax aid to the Church itself. The state may no more tax its citizens to furnish free transportation to a parochial school than to a church. He ends his opinion on a note of warning: "But we cannot have it both ways. Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. . . . If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds only to find that it carried political controls with it. Indeed this Court has declared that 'it is hardly lack of due process for the government to regulate that which it subsidizes'."

Mr. Justice Rutledge wrote a separate dissenting opinion in which Justices, Frankfurter, Jackson, and Burton concurred. He traces in considerable detail the history of what was meant by an establishment of religion as that phrase is used in the First Amendment. He concludes that its purpose was to create a complete and permanent separation of the spheres of religious activity and civil authority. It forbids state support, financial or other, of religion in any guise. It outlaws all use of public funds for religious purposes. Applying this to the present case, he concludes: "New Jersey's action therefore exactly fits the type of exaction and the kind of evil at which Madison and Jefferson struck. Under the test they framed, it cannot be said that the cost of transportation is no part of the cost of education or of the religious instruction given. That it is a substantial and necessary element is shown most plainly by the continuing and increasing demand for the state to assume it."

Mr. Justice Rutledge also ends on a note of warning: "Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools. . . . In my opinion, both avenues were closed by the Constitution. Neither should be opened by this Court."

Freedom of Speech—Contempt of Court. In Craig v. Harney,[23] the Court considered again the main issues dealt with in the Bridges[24] and Pennekamp[25] cases, and reached the same result. In this case, a newspaper publisher, editorial writer, and news reporter were cited for contempt of court as a result of the publication of certain editorials and news stories relating to a case pending in the local court. This case, presided over by a lay judge, had resulted in the eviction of a service man from a building he had leased. The judge had three times directed a reluctant jury to bring in a verdict against the service man. The news stories and editorial criticized the judge for the handling of the case, described it as a "travesty on justice," announced that the judge had brought down "the wrath of public opinion upon his head," and that the public was aroused because a service man was "getting a raw deal." The fact that the judge was not a lawyer "familiar with proper procedure and able to interpret and weigh motions and arguments by opposing counsel" was deplored. . . . These criticisms and attacks were made while the judge had under consideration a motion for a new trial. Speaking through Mr. Justice Douglas, the Court set aside the convictions for contempt. It admitted that the publications complained of were intemperate and unfair, but said that a judge was not entitled to hold in contempt anyone who "ventures to publish anything that tends to make him unpopular or to belittle him." There must be an imminent, not merely a likely, threat to the administration of justice. "The danger must not be remote, or even probable; it must immediately imperil." Again the Court states its opinion that judges ought to be men who can "take" criticism. "Judges are supposed to be men of fortitude, able to thrive in a hardy climate. Conceivably a campaign could be so managed and so aimed at the sensibilities of a particular judge and the matter pending before him as to cross the forbidden line. But the episodes we have here do not fall in that category."

Mr. Justice Frankfurter, joined by the Chief Justice, dissented. He deplored breaking down all barriers against criticism directed against a judge actually engaged in deciding a case. "The demands found to have been made upon the judge by these papers may agitate even a conscientious judge. He may himself be unaware of the extent to which his powers of reason have not the sway they would otherwise have." Referring to the reliance of the majority upon the "clear and present danger" test, Mr. Justice Frankfurter observes: "Only the pungent pen of Mr. Justice Holmes could adequately comment on such a perversion of the purpose of his phrase." Mr. Justice Jackson also dissented. He stated that the criticism involved here "infringed the citizen's right to a calm and im-

[23] 331 U. S. 367, 1947.
[24] Bridges v. California, 314 U. S. 252, 1941.
[25] Pennekamp v. Florida, 328 U. S. 331, 1946.

partial trial. . . For this Court to imply that this kind of attack during a pending case is all right seems to me to compound the wrong." He then pays his respects to the argument that judges must be men of fortitude. "But even worse is that this Court appears to sponsor the myth that . . . newspaper attacks on them [judges] are negligible because they do not penetrate the judicial armor. . . to me this is an ill-founded opinion, and to inform the press that it may be irresponsible in attacking judges because they have so much fortitude is ill-advised or worse."

Criminal Due Process—Double Jeopardy—Cruel and Unusual Punishment. A novel and macabre case came to the Court from the failure of the electric chair in which a young Negro, Willie Francis, was being executed to work properly and produce death. Could the state constitutionally try again? The Court divided five-to-four on this question in the case of Louisiana v. Resweber.[26] Speaking through Mr. Justice Reed, the majority found no double jeopardy or denial of due process. It also rejected the contention that the mental anguish involved in waiting for execution, repeated a second time, subjects the petitioner to cruel and unusual punishment. "The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely." Therefore the accident which prevented the first execution does not add any element of cruelty to the second execution by the same method. There is no denial of equal protection of the laws here, since the accident was not intended and might have happened to any condemned man. Willie Francis was not singled out for this treatment by malevolent intention.

Mr. Justice Burton, joined by Justices Douglas, Murphy, and Rutledge, dissented. If the state had done intentionally what here occurred accidentally, there would be no doubt that it was inflicting cruel and unusual punishment. "If the state officials had deliberately and intentionally placed the relator in the electric chair five times and, each time, had applied electric current to his body in a manner not sufficient, until the final time, to kill him, such a form of torture would rival that of burning at the stake. . . While five applications would be more cruel and unusual than one, the uniqueness of the present case demonstrates that, today, two separated applications are sufficiently 'cruel and unusual' to be prohibited."

Criminal Due Process—New York "Blue Ribbon" Jury. Fay and Bove, two vice-presidents of leading labor unions, were convicted of extortion by a special, or "blue ribbon," jury in a New York court. While these juries have been used in New York City for nearly fifty years, the Supreme

[26] 329 U. S. 459, 1947.

Court of the United States has not before passed upon the question of their validity under the Fourteenth Amendment. It did so in Fay v. New York.[27] Under the New York statutes, the county clerk selects and empanels all jurors. He first chooses a "general panel" for ordinary jury duty. From the general panel he then selects a much smaller number who are examined as to their qualifications to serve as special jurors. In New York county, some 3,000 special jurors will be chosen from a general panel of 60,000. Originally the qualifications for special jurors were higher than for general jurors, but in 1940 this difference was eliminated from the statutes, and general jurors must now have the qualifications formerly required of special jurors. In other words, while the special jurors are a select group, the criteria by which the county clerk singles them out are nowhere set out in the statutes. A special jury will be granted in the sound discretion of the court in cases in which the public interest would be served thereby.

Fay contended that the "blue ribbon" jury which convicted him had deprived him of due process because (1) laborers, craftsmen, and service employees were systematically excluded from the panel; (2) because women were excluded; and (3) because experience had shown that special juries are more prone to convict than general juries. Mr. Justice Jackson, speaking for a majority of five, rejected all of these contentions. The fact that special jurors are drawn in the main from professional and clerical workers does not show discrimination on economic lines, since persons are employed in these groups at widely varying salary levels. Due process does not require that a person be tried for crime by a jury made up of representatives of different groups or races. There is no evidence that any special group or class was singled out for exclusion in selecting the special jury. Women were not excluded. They are eligible under the law to serve, but the law allows them to claim exemption from jury service if they wish to do so. The statistics purporting to show that a special jury is a "hanging jury," more likely to convict than an ordinary one, were all compiled during the period in which the statute required higher qualifications for special than for general jurors. No figures are presented to show that as presently selected the two kinds of juries behave differently in regard to conviction.

Four justices, speaking through Mr. Justice Murphy, dissented on the ground that the basic principle of a "blue ribbon" jury is invalid since the system denies the accused his constitutional right to be tried by a jury fairly drawn from a cross-section of the community. The wide discretion exercised by the county clerk in selecting the special jury makes it possible for him to elect a "hanging jury" if he so desires, and on this ground also denies due process.

[27] 332 U. S. 261, 1947.

Criminal Due Process—Right to Counsel. In four cases, the question was raised whether a convicted criminal had been denied due process through the failure of the court to see that he was represented by counsel. The Court makes it clear that the answer in each case will depend upon the particular circumstances of the case. In Foster v. Illinois,[28] Foster had been convicted eleven years ago on a plea of guilty to a charge of burglary and larceny. The record did not disclose that he was offered counsel by the court, or requested it. The Court found no denial of due process. While granting that assignment of counsel may "in the circumstances of a particular situation" be essential to a fair trial, and therefore to due process, this is not always true. There is nothing in the record of this case to indicate that the accused was placed at a disadvantage or subjected to deprivation of his rights. The same result was reached in Gayes v. New York,[29] in which a sixteen-year-old boy was allowed to plead guilty to a charge of burglary without being represented by counsel. In Carter v. Illinois,[30] the Court held that there had been no denial of due process in allowing Carter to plead guilty to a charge of murder, without being represented by counsel, after the court had clearly explained to him his right to counsel and the consequences of a plea of guilty. In all three of these cases Justices Black, Douglas, Murphy, and Rutledge dissented.

In a *per curiam* opinion, however, the Court held, in DeMeerleer v. Michigan,[31] that failure to provide counsel denied due process. Here, in 1932, a seventeen-year-old boy was arraigned, tried, convicted of first-degree murder, and sentenced to life imprisonment on the same day. "The record indicates that petitioner was without legal assistance throughout all these proceedings and was never advised of his right of counsel. The court did not explain the consequences of the plea of guilty, and the record indicates considerable confusion in petitioner's mind at the time of arraignment as to the effect of such a plea. No evidence was introduced in petitioner's behalf and none of the state's witnesses were subjected to cross examination."

2. STATE TAXATION OF COMMERCE

The annual crop of cases in which the Supreme Court decides whether various state taxes impose invalid burdens upon commerce amounted to four. None of these established new principles of law. In Joseph v. Carter & Weekes Stevedoring Company,[32] the Court held unconstitutional a New York tax levied upon the gross receipts derived from loading and unloading vessels employed in interstate and foreign commerce. While the tax was not in its terms discriminatory, the Court held that it did invalidly burden commerce. The Court also held invalid, in Freeman v. Hewitt,[33]

[28] 332 U. S. 134, 1947. [29] 332 U. S. 145, 1947. [30] 329 U. S. 173, 1946.
[31] 329 U. S. 663, 1947. [32] 330 U. S. 422, 1947. [33] 329 U. S. 69, 1946.

the application of an Indiana gross income tax to the receipts of one domiciled in the state of proceeds from the sale of securities sent outside the state to be sold. Here again interstate commerce was held to be burdened.

In International Harvester Company v. Evatt,[34] the Court held that Ohio could validly collect a franchise tax from a foreign corporation doing business in the state on its right to carry on intrastate commerce therein, and might compute the amount of this tax by a formula which took into account the interstate and out-of-state transactions of the company in relation to the volume of its local business. The Court held that the tax computed by this rule did not constitute a burden upon the company's interstate business.

A state may not validly collect a sales-tax upon the sale of gasoline from a seller of oil delivered in the state to a foreign purchaser. Such a tax violates the clause of the Constitution forbidding states to impose taxes upon exports. This is the case of Richfield Oil Corporation v. State Board of Equalization.[35]

[34] 329 U. S. 249, 1946.
[35] 329 U. S. 416, 1947.

AMERICAN GOVERNMENT AND POLITICS

THE FEDERAL LOYALTY PROGRAM: BACKGROUND AND PROBLEMS*

ROGER S. ABBOTT
University of Michigan

Since the promulgation on March 21, 1947, of Executive Order 9835 "prescribing procedures for the administration of an 'employees' loyalty program in the executive branch of the government," there has been widespread discussion concerning the nature of disloyalty, its probable extent in the federal service, and the desirability of the loyalty program.

One point of view, among some members of Congress and elsewhere, is that this loyalty program does not go far enough to meet what is regarded as the serious menace of foreign (that is, Russian) directed or inspired subversives in the government. A sharply contrasting attitude, also voiced by a few Congressmen and by others, is that the menace is exaggerated for various reasons and that the program constitutes a "witch hunt" aimed at liberals generally and a dangerous attack upon civil liberties. Between these two extremes are gradations of opinion accepting the principle of the program but with reservations of varying intensity as to some of its standards and procedures, and with a watchful eye on its operation and on its effect within the federal service and outside.

Why has this issue of employee loyalty become so prominent? What are the main features and problems of the loyalty program and its possible consequences? Basic to a consideration of these questions is an understanding of the program's background.

I

While the Executive Order of 1947 inaugurated the first service-wide loyalty check in the federal government, disloyalty as a ground for dismissal is not an entirely new concept. It may be said generally to have been introduced in 1939 in a more restricted sense in the Hatch Act, in which membership in any organization advocating the overthrow of the constitutional form of government in the United States was made a ground for removal.[1] Before that time, Civil Service Rule I of 1884, pro-

* This article is adapted from a part of the writer's doctoral dissertation on the loyalty program. Prepared in early April, it does not deal with later developments.

[1] 53 Stat. 1148, Sec. 9(A). Allegations of disloyalty—usually in terms of "un-American" or "subversive" activities—had been leveled against federal employees previously from Congress, especially by the House Committee on Un-American Activities and its predecessors. Also, it has been reported that the Civil Service Commission during the First World War conducted loyalty investigations; but the docu-

hibiting questions concerning political or religious opinions or affiliations, was deemed to preclude a loyalty inquiry.[2]

In 1940, the Civil Service Commission stated its policy not to certify for employment the name of a member of the Communist party, the German-American Bund, or any other Communist or Nazi organization.[3] Similar language in appropriation acts, beginning in 1941, prohibited expenditures for salaries of such persons. Violations of these provisions by individuals were difficult to establish; the membership records of such groups generally did not exist or were kept secret.[4]

A further Congressional step was the appropriation of $100,000 to the Federal Bureau of Investigation in 1941 to investigate federal employees alleged to be "members of subversive organizations or to advocate the overthrow of the Federal Government."[5] The findings were to be reported to Congress. The FBI reports (without recommendations) were sent to the agency heads concerned, who exercised their discretion as to what administrative action, if any, to take. To advise the agencies in interpreting these complex reports and in developing procedures for handling the cases, the Attorney-General, in April, 1942, created an inter-departmental committee of four officials, aided by Justice Department staff.

The vague term "subversive organizations" not having been defined by Congress, Attorney-General Biddle interpreted it to include not only groups advocating forcible overthrow of the government, but also those with Communist backgrounds or affiliations and American Fascist, Nazi, Italian, and Japanese organizations. The list was not published, but descriptive memoranda concerning the groups were transmitted to employing agencies for confidential use. Significantly, the agencies were cautioned that none of the organizations was denounced as subversive *per se*, except for the Communist party and its affiliates, the German-American Bund, and "certain enemy-dominated organizations." With respect to the others, it was pointed out that there were circumstances requiring their inclusion within the scope of the inquiry, but that it would be "grossly unfair" to the persons charged with participating in them to place them arbitrarily in the same category with the Communist party and the Bund.[6] Further-

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ments explaining the reason and authority for them are still secret. See Paul Van Riper, *The Politics of Office-Holding*, Ph.D. dissertation, University of Chicago, Aug., 1947, 196.

[2] *Report of the President's Temporary Commission on Employee Loyalty*, Mar. 22, 1947, 3.

[3] Statement by Seth Richardson, chairman, Loyalty Review Board, Dec. 23, 1947, 1.

[4] Report of Attorney-General to Congress, June 30, 1942, 77th Cong., 2nd Sess., House Doc. 833, p. 5.

[5] Pub. Law 135, 77th Cong., 1st Sess., June 28, 1941.

[6] Report of Attorney-General, cited, 20.

more, the objective test of membership in a "front" organization was declared to be "thoroughly unsatisfactory" and to fail completely "where the purposes of the organization are so stated as to make membership in most circumstances consistent with loyalty." Activity, rather than membership, was to be stressed, and even this was to be but one of many matters to be considered.[7] These qualifications are worth noting in the light of later developments in 1947.

The investigation of complaints against employees revealed, according to the Attorney-General, that the "overwhelming majority" had been involved because their names had appeared on the active indices of Communist "front" organizations, in most instances for solicitation or mailing-list purposes without their knowledge. This lead proved to be "utterly worthless" in "all but a small residuum of the cases." It was concluded on the basis of the inter-departmental committee's report that results were "utterly disproportionate to resources expended," and that the "futility and harmful character of a broad personnel inquiry have been too amply demonstrated." It was recommended that future investigations be limited to matters "clearly pertinent to the vital problem of internal security."[8]

Nevertheless, a similar investigation was required in the appropriation act of July 2, 1942, for the Justice Department.[9] This produced comparably negative results.[10] No provision was made for subsequent inquiries, possibly due in part to the known reluctance of FBI Director Hoover to have his limited investigative resources diverted from other tasks at the height of the war.

In any case, the statutory provisions proscribing the employment of "subversive" persons continued in force. Furthermore, the second inter-

[7] *Ibid.*, 5. Representative Martin Dies, then chairman of the House Committee on Un-American Activities, took a different view of this matter. He obtained a photostatic copy of these memoranda and had them inserted in the *Congressional Record*, Sept. 24, 1942, 7442–8. He attacked the report, contending that the Justice Department should simply have given the names of the subversive organizations and of employees belonging to them to Congress, which would determine for itself the extent of the inroads being made by subversive groups into the federal service. (*Ibid.*) Cf. also the annual report of his committee of Jan. 2, 1943 (H. Rept. 2748, 77th Cong., 2nd Sess., 8). A minority view from this committee was expressed by Rep. Jerry Voorhis, who held that the investigation had been made "effectively, carefully, and conscientiously." (*Cong. Rec.*, Sept. 3, 1942, 7270).

[8] Report of Attorney-General, cited, 26. Of a total of 4,579 complaints (including 1,100 from the Dies Committee), which included some duplications and names of persons not in executive agencies, only 34 resulted in separations and 12 in other administrative actions, as reported by the agencies. Some Congressmen charged that the agency heads had not been sufficiently aggressive.

[9] Pub. Law 644, 77th Cong., 2nd Sess. The sum of $200,000 was allotted.

[10] Cf. House Doc. 162, 78th Cong., 1st Sess. (Apr. 17, 1943). The procedures of this investigation are described in detail in Robert Cushman, "Employees Accused of Disloyalty," *Pub. Admin. Review*, Vol. 3, No. 4, pp. 310–311 (Autumn, 1943).

departmental committee, created in 1943 during the course of the second investigation by the Justice Department,[11] continued to exist and to provide one of the legal means for processing loyalty cases. In the period July 1, 1942, to June 30, 1945, 6,193 cases under these provisions were referred to the FBI for investigation, culminating in 101 dismissals, 75 other administrative actions, and 21 resignations during the probe.[12]

To complete this picture of actions on grounds of disloyalty prior to the loyalty program in 1947, brief reference may be made to applicants and appointees (prior to certification) concerning whose acceptance or rejection the Civil Service Commission has final authority. The Commission had a broader frame of reference than did employing agencies with reference to permanent employees. Its regulations permitted it to find applicants or appointees ineligible if there existed "reasonable doubt" as to loyalty.[13]

During the period from July 1, 1940, to March 31, 1947, there were only 1,313 rulings of ineligibility where disloyalty was a major factor, out of a total of 43,811 ratings for all causes.[14] This tabulation, however, was qualified by the fact that the Commission had resources during this period to investigate only 395,000 out of a total of 7,000,000 placements.

Notwithstanding these efforts by the executive branch to keep out or remove disloyal persons, concern was expressed in Congress as to the lack of uniformity of procedures for handling loyalty cases and the absence of central responsibility for action.[15] Despite favorable developments in the

[11] Executive Order 9300, Feb. 5, 1943 (*Fed. Register*, Feb. 9, 1943, 1701). This incorporated the term "subversive activity," without definition.

[12] *Report of the President's Temporary Commission on Employee Loyalty*, 16–17. This compilation was supplemented by a report by the second interdepartmental committee, covering the period from February 5, 1944, to December 2, 1946 (involving about five months' overlapping), indicating 654 cases on which final action was reported, which produced 24 discharges and three other disciplinary actions. (*Ibid.*, 20.)

[13] Cf. Cushman, *op. cit.*, 313. A similar criterion was applied to war service appointees. Cf. Friedman v. Schwellenbach *et al.*, 159 F. (2d) 22 (C.C.A., D.C., Dec. 16, 1946). The Commission's letter of May 5, 1944, to Friedman explained that he had been removed from the War Manpower Commission mainly because of his activities in connection with the American Peace Mobilization (a "front" group) and his Communist "party line" attitude.

[14] Testimony by Commissioner Arthur Flemming before the House Civil Service Committee on June 4, 1947. (Hearings on H. R. 3588, a bill to provide for a Federal Employee's Loyalty Act, 80th Cong., 1st Sess., 54.) The total included 714 Communists or followers of the Communist party line, the other 599 being members of Nazi, Fascist, and Japanese groups.

[15] Criticism of the executive branch was expressed in extreme form by the House Committee on Un-American Activities and in 1943 by the Kerr subcommittee of the House Appropriations Committee, which held several prominent officials "subversive" and therefore "unfit to continue in government employment" and recom-

war to 1946, this criticism increased and resulted in House approval of a general study of the problem, and in hearings by a subcommittee of the House Civil Service Committee from January to July, 1946. The committee's report[16] led to the creation in November, 1946, of the President's Temporary Commission on Employee Loyalty, composed of six leading executive officials and instructed to inquire into the standards and procedures for investigating employees and applicants and for removing or disqualifying any "disloyal or subversive" person.[17]

After receiving written responses to special letters sent to the FBI and the military intelligence services, and to general letters directed to fifty executive agencies, and after hearing statements in executive session by the Attorney-General, the Assistant Director of the FBI and the chairman of the Interdepartmental Committee on Loyalty Investigations, this Commission prepared a report with recommendations dealing with general standards for ascertaining disloyalty and with procedures for investigating the employees in the executive branch and for handling cases. These recommendations were incorporated directly in Executive Order 9835.

With reference to the earlier efforts, the Commission concluded that they were well intended but were "ineffective in dealing with subversive activities which employ subterfuge, propaganda, infiltration, and deception."[18] It expressed its belief, however, that "the vast majority of federal employees are loyal," but that "some" are subversive or disloyal. The number of these was difficult to assess "because of the secretive manner and method of their operation." It concluded that "whatever their number, the internal security of the government demands continuous screening . . . of present and prospective employees. The presence . . . of *any* disloyal . . . persons . . . presents a problem of such importance that it must be dealt with vigorously and effectively."[19]

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mended the withholding of payment of their salaries. "Subversive activity" was loosely defined as that "which seeks to undermine its [U. S. government's] institutions . . . to distort its functions . . . to impede its efforts, the ultimate end being to overturn it all. . . ." (H. Rept. 448, 78th Cong., 1st Sess., 5.) Cf. F. Schuman, "Bill of Attainder in the Seventy-eighth Congress, in this REVIEW, Vol. 37, p. 819 (Oct. 1943); A. W. Macmahon, "Congressional Oversight of Administration," *Polit. Science Quarterly*, Vol. 58, p. 170 (June 1943).

[16] Cf. *Cong. Record*, July 20, 1946, 9601 ff.

[17] Executive Order 9806. This commission included A. D. Vanech, special assistant to the Attorney-General, as chairman; Harry Mitchell, president of the Civil Service Commission; John Peurifoy, Acting Assistant Secretary of State for Administration; Edward Foley, Jr., Assistant Secretary of the Treasury; Kenneth Royall, Under Secretary of War; and John Sullivan, Under Secretary of the Navy. Rep. Rees, a member of the House subcommittee, had opposed a commission of executive officials, favoring instead a continued study by the House Civil Service Committee to devise means for "eliminating without delay employees . . . when there is reasonable doubt concerning their loyalty."

[18] Report, *op. cit.*, 7. [19] *Ibid.*, 23. Italics in the original.

The facts presented to the Commission did not enable it to determine the extent of such a threat to our system of government. Nevertheless, it believed that the recent Canadian espionage exposé, the Communist party line activities of some of the leaders and members of a government employee organization, and current disclosures of disloyal employees provided "sufficient evidence to convince a fairminded person that a threat exists."[20]

To provide adequate protection for the security of the government, the Commission suggested two mutually dependent lines of attack. Unless both were carried out, this basic objective could not be achieved. The first was described as "the counter-espionage phase of counter-intelligence . . . designed to protect our Government from all types of espionage infiltration by the penetration of enemy and subversive networks." The second was identified as the barring of disloyal persons from the government—"counter-intelligence in its defensive rather than offensive aspect."[21]

Although the Commission especially stressed the first approach and warned against a "disproportionate preoccupation with the question of employee loyalty alone," it did not consider means for its implementation, since the Commission's frame of reference had not included that question.[22] The subsequent loyalty program appears to have been designed mainly in terms of the second approach.

II

The broad purpose of the loyalty program enunciated by the Commission and adopted in the preamble of the Executive Order is twofold: not only to afford "maximum protection . . . [to] the United States against infiltration of disloyal persons into the ranks of its employees," but also to afford "equal protection from unfounded accusations of disloyalty . . . [to] the loyal employees of the Government." To this second official objective may be added, think some observers, the assumption that the program was undertaken in part to forestall more drastic action against employees by Congress.

Whether or not this belief is correct, the sweeping accusation sometimes heard that the loyalty order is an intentional attack upon the employees' civil liberties appears untenable. Actually, the order proposed the first general and fairly orderly procedure, with provision for appeal, made mandatory as a prerequisite to dismissal on grounds of disloyalty.[23] The possible unintended effects of the program on civil liberties and the quality

[20] *Ibid.*, 21. The employee organization mentioned was undoubtedly the United Public Workers of America (C.I.O.), which had received considerable Congressional criticism.

[21] *Ibid.*, 22.

[22] *Ibid.*

[23] Cf. Robert Cushman, "The Loyalty Order," *Survey Graphic*, Vol. 36, p. 284 (May, 1947).

of the federal service present another question, examined briefly at the conclusion of this article.

The standard of disloyalty set forth in the Order consists of the general test that "on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the government of the United States." Six "activities and associations" may be considered. In brief, these are (1) sabotage and espionage; (2) treason or sedition or advocacy thereof; (3) advocacy of revolution or force to alter the constitutional form of government of the United States; (4) intentional, unauthorized disclosure of confidential documents under circumstances indicating disloyalty; (5) acting so as to serve the interests of another government in preference to the interests of the United States; (6) "membership in, affiliation with, or sympathetic association with any foreign or domestic organization, association . . . designated by the Attorney-General as totalitarian, fascist, communist, or subversive. . . ."[24]

This part of the Order has evoked considerable criticism largely focused on the sixth point. Some questions have been raised about the wording of other points which could lead to undesirable and probably unintended interpretation, but limitations of space preclude their analysis here. The opposition to the sixth point has generally centered on the vagueness of the terms, the possible implication of "guilt by association," and the seemingly unrestricted authority assigned to the Attorney-General.

The indefiniteness of the words used is undeniable, and it may be doubted whether specific and completely satisfactory definitions could be evolved for them.[25] A further potential difficulty was seen in the Order's failure to indicate that the "sympathetic association" must be with the portion of the organization's program making it "subversive," assuming that some of its objectives might be worthy.[26] Although the language of the Order would not necessarily preclude a violation of the fundamental American legal doctrine of punishment only for personal guilt,[27] subsequent official assurances have been given in this connection.[28]

[24] Part V.

[25] An interesting attempt has been made by the Friends of Democracy, Inc., directed by Mr. L. M. Birkhead, to explain "How to Identify an American Communist" (in Feb., 1947) and "How to Recognize an American Pro-Fascist" (in May, 1947)—summarized in *New York Times*, Feb. 26 and May 26, respectively. Even these formulae, however, have elements of ambiguity and could be given a more inclusive application than the authors may have intended.

[26] Cf. Cushman, *op. cit.*, note 23; also letter to the *New York Times*, Apr. 13, 1947, from Dean Griswold and Professors Chafee, Katz, and Scott of the Harvard Law School.

[27] Cf. Bridges v. Wixon, 326 U. S. 135 (1945); Z. Chafee, Jr., *Free Speech in the United States* (Harvard University Press, 1941), 470–484.

[28] In a "Statement on Loyalty," issued by President Truman on November 14, 1947, it was specified that "membership in an organization is simply one piece of

Discussion of the power (or onerous duty) given to the Attorney-General concerning organizations has emphasized that they were not granted open hearings with an opportunity to defend themselves, and that no provision was made for publication of the list of organizations so designated, so as to permit employees to be fully informed as to the government's attitude concerning them.

The former criticism has received no official rebuttal or explanation other than the statement that the Executive Order contains no authorization for hearings.[29] The latter question has been answered. After months of study of voluminous files on more than three hundred organizations by a staff of Justice Department lawyers said to number as many as thirty,[30] Attorney-General Clark finally on November 24, 1947, transmitted a list of designated organizations, as required by the Executive Order, to the chairman of the Loyalty Review Board, who published it on December 4. The Attorney-General explained that the FBI investigative reports were correlated and that memoranda on each organization were prepared and reviewed by the Solicitor-General, the Assistant Attorneys-General, the Assistant Solicitor-General, and by himself.

Notwithstanding this screening process, and the Attorney-General's qualification that it is possible that many loyal persons belong to the groups, the list received considerable comment, some finding it too restricted or too inclusive.[31] The list included 47 groups named in 1943 for reference only by executive agencies; 33 newly designated organizations (including several affiliates of the Communist party and of the Civil Rights Congress); and 11 schools, said to be adjuncts of the Communist party. The accompanying letter noted that the list was neither complete nor final. A number of small and local groups were not included; many were not added because the available information was insufficient. Others, innocuous at the time, might become dangerously infiltrated, and new ones might be formed.[32]

The first legal challenge to this action was made by one of the designated organizations, the Joint Anti-Fascist Refugee Committee. Mr. O. John Rogge filed suit in its behalf in a federal district court in Washington, D.C., in February, 1948, charging that the Executive Order violated due

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evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case." *New York Times*, Nov. 15, 1947. This was repeated in the statement of "Regulations for the Operations of the Loyalty Review Board," adopted by the Board on Dec. 17, 1947, p. 8.

[29] Letter, dated Feb. 10, 1948, to the writer from Assistant Attorney-General T. Vincent Quinn.

[30] *New York Times*, Dec. 7, 1947.

[31] Cf., e.g., article by Dillard Stokes and editorial in *Washington Post*, Dec. 6, 1947; ed. *New York Times*, Dec. 8, 1947.

[32] A copy of the seven-page list and letter may be obtained from the Civil Service Commission.

process by depriving the organization of a hearing. It was alleged that the Committee had suffered such damages as loss of tax-exempt status, financial backers, and friends.[33]

III

The operation and procedures of the loyalty program may now be outlined. The program was not actually started until August, 1947. Additional funds were sought in May after a Budget Bureau study,[34] but Congress did not act on the request until late July. One reason for the delay was the consideration of a bill introduced by Representative Rees to replace the executive program. This measure adopted substantially the same standards as the Executive Order, but altered the procedures in such a way as to arouse doubt by executive officials as to its administrative feasibility and its probable cost.[35] It was passed by the House, but not reported from committee in the Senate.[36]

At the end of July, the executive program was granted $11,000,000,[37] and in August it was begun. The preliminary service-wide check required each of the approximately two million employees to be finger-printed and to answer a short questionnaire, designed only for identification purposes. Contrary to popular impression, it did not involve any attesting of loyalty or disclosure of membership in political organizations.[38] The occasional

[33] *New Republic*, Vol. 118, p. 5 (Feb. 23, 1948).

[34] The supplemental budget request for the current fiscal year totalled $24,900,000, including $16,160,000 for the Civil Service Commission and $8,740,000 for the FBI. (H. Doc. 242, 80th Cong., 1st Sess., p. 1, May 9, 1947.) Any additional expenses in other agencies would be met by transfer from this amount.

[35] H. R. 3588. Hearings were held during June 3–10 by a subcommittee of the House Civil Service Committee. A detailed analysis of its administrative implications and a comparison with the Executive Order were presented by Civil Service Commissioners Mitchell and Flemming. In general, the bill sought to concentrate responsibility in the FBI and to authorize a central, independent review board, with six-year terms, to remove disloyal employees or appointees. H. R. 3813, with slight modifications, was substituted for it and presented to the House on June 12.

[36] Passed in the House by 319–61, with 49 not voting. *Cong. Rec.*, July 15, 1947, 9156. Debate, including some discussion of the Executive Order, on pp. 9118–9156.

[37] Including $3,500,000 for the Civil Service Commission and $7,500,000 for the FBI (H. Rept. 1053, transmitting 2nd Supp. Approp. Bill, 1948, July 24, 1948, approved by both houses). Rep. Taber reported the Appropriation Committee's dissatisfaction with the Commission's plans, adding that its activity should be restricted "to the barest minimum" and that it should rely on the FBI for investigative reports. The cut in the FBI estimate was made because of the passage of time since May.

[38] Form 84-A, Request for Report on Loyalty Data, Aug. 4, 1947. The only question concerning organizations asked about affiliations, other than religious or political. Rep. Daniel Reed called this an "escape clause for Communists." *Cong. Rec.*, Jan. 14, 1948, A 173. Rep. Wigglesworth, chairman of a House appropriations subcommittee, questioned Commissioner Flemming about this. The latter explained that the question was included solely to aid in identification. A question

highlighted refusal to answer has represented, not an attempt at concealment, but a general protest against the program.[39]

The next step was the transmission of these completed questionnaires to the FBI for a file check to determine the existence of "derogatory information." If none is found, there is no further investigation, and the form is returned with such notation to the Civil Service Commission and then forwarded to the employing agency. However, if some data or allegations which might have relevancy to loyalty are revealed, the Bureau then undertakes a "full field investigation" of the individual.

At the outset of the program, it was estimated that approximately two per cent of the names would produce such a question.[40] On March 16, 1948, however, FBI Director Hoover announced that 1,005,944 names had been cleared and that only 777 full investigations had been instituted. Of these, 170 had been completed, resulting in 33 determinations of loyalty and 94 adverse findings.[41]

After such an investigation has been made, the agent's report is subjected to review at several levels within the FBI. If there is an adverse finding and it is approved by the Bureau, the report is sent to the appropriate agency loyalty board, composed of not fewer than three persons. If this board's examination of the report, possibly supplemented by information obtained from the employee, results in an adverse determination, a letter of charges is sent to the employee. This document contains the charges in factual detail "so far as security considerations will permit" and a statement of the employee's right to answer them in writing within ten days and of his right to have an administrative hearing, in which he may appear, be represented by counsel, and present evidence. The hearing

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as to political affiliation would be contrary to civil service principles and, in any case, would not disclose disloyal affiliations, since Communist party or "front" organization members generally conceal such fact. (Hearings on Independent Offices Appropriation Bill for 1949, 80th Cong., 2nd Sess., Feb. 14, 1948, 853.)

[39] Professor Colston Warne, an unpaid consultant to the Council of Economic Advisers, refused to sign, on principle (*New York Times*, Oct. 30, 1947; see also his letter in that paper on Nov. 11; he was retained but required to pay his own expenses.) The first regular employee reported to have refused was Walter Davis, a disabled veteran in the Veterans Administration, who declared he was not a Communist but that he had not fought for the kind of government "that tells you—'sign this, or else'." (*New York Times*, Dec. 7, 1947). The sequel, if any, was not reported.

[40] Flemming, *op. cit.*, *supra*, note 14, at p. 28.

[41] Five were found to be no longer employed, and 38 resigned during the investigation. *New York Times*, Mar. 17, 1948. An interesting by-product of this fingerprint check is that of the 410,211 prints received from August 1 to December 1, 1947, 11,511, or 8.5 per cent, were revealed as having police records. (J. E. Hoover, in testimony before the House Appropriations Committee, Hearings on the Justice Department Appropriation Bill for 1949, 80th Cong., 2nd Sess., Dec. 10, 1947, p. 238.

is private, and a copy of the transcript of proceedings is furnished to him.

If the finding after hearing is adverse, the employee may be suspended, but he then has the right of further appeal within ten days to the agency head. The latter, or his designee, may fix the scope and extent of the hearing. A third appeal within twenty days after receipt of final decision may be carried to the central Loyalty Review Board. The membership of this Board, authorized by the Executive Order, was announced on November 8, 1947, by the Civil Service Commission after the list of twenty members had been approved by the President. The members are private citizens, meeting from time to time and serving without compensation. The membership was subsequently increased to twenty-three, with a potential total of twenty-five. The Board is representative of a broad cross-section of the public and includes several prominent professors of political science, lawyers, and others.[42] The Board held its first meeting on December 3, resulting in the development of a statement of principles and procedures for itself and for the agency and regional boards, which was issued on December 17.[43]

Appeal to this Board may also be made by an applicant for federal employment after he has had recourse to the appropriate regional loyalty board, created and staffed by the Civil Service Commission in fourteen regions. The procedures are similar to those followed by the agency boards. The name check, instituted for all applicants after September 30, 1947, is conducted by the Civil Service Commission and is required, by the Executive Order, to be made against not only the files of the FBI and of the Commission, but also those of the military intelligence agencies, the House Committee on Un-American Activities, local law-enforcement agencies, schools and colleges of the applicant, his former employers, references given by him, and other appropriate sources.

If "derogatory information" is produced by this check of an estimated 500,000 applicants per year—which might occur in 2.6 per cent of the cases, according to an early Commission estimate—a "full field investigation" is made by the FBI.

The time which will probably be required for adjudication and appeal of such cases is uncertain. With reference to employee appeals, assuming that they are carried to the central board, the maximum time for an individual case has been estimated at ninety days.[44] The handling of all ap-

[42] A list of the 23 members, with brief biographical sketches, was inserted in the Hearings of the House Appropriations Subcommittee on the Independent Offices Appropriation Bill for 1949, Feb. 14, 1948, 841–2.

[43] A general ten-page statement was published on Dec. 23 by the chairman, Mr Seth Richardson. Mimeographed copies of these documents may be secured from the Civil Service Commission.

[44] Mr. Fleming, in Hearings, *op. cit.*, *supra*, note 38, at p. 245.

pealed employee cases should be completed by October, 1949.[45] It is believed, however, that few cases—perhaps twenty per cent at the most of those in which there are original adverse determinations—will reach the top level. A large proportion of the cases will probably be "washed out" by the agency boards or heads—that is, the persons will either be cleared or the charges against them may be so convincing that they will not appeal. Thus the major work load may fall on the agency boards.[46] The relatively few cases reaching the top board will be assigned to hearing panels whose decisions may be reviewed by the full board at its discretion.

The central Loyalty Review Board, however, is expected to set the general tone of the loyalty program and, in the words of its chairman, to "do its utmost to see that justice is done, that individual rights are protected as fully as may be." A basic dilemma was presented to it in the fact that the FBI report is vital to the entire program and that the Bureau has stated that if confidential sources are involved, their disclosure would greatly reduce the Bureau's resources. Director Hoover has declared that his agency is charged "more primarily with the security of the country from espionage or sabotage," and that it is necessary to have certain informants who will furnish data of very secret character whose disclosure would be detrimental to such security. Such sources he will not identify. Two other types of informants, he has stated, can be revealed. These are the "contact type" (who may be a lawyer, Congressman, or prominent business man) and the "next-door neighbor or fellow employee." Even in such instances, however, the informants' identity could be revealed only upon the basis of their previous consent. If such were sought, he doubts whether much information could be obtained.[47] Nevertheless, the possibility of personal grudges and malicious rumor should be considered.

According to the original view of the chairman of the Board, it will probably not be practicable to permit cross-examination "in the great majority of cases." On the other hand, it is said that a FBI representative will be available to evaluate for the hearing board the reliability of the confidential source. Furthermore, the disadvantage to the employee of non-confrontation of witnesses will be considered in the adjudication. An additionally stated justification of this policy is that, legally, the government is entitled to discharge any employee for reasons which seem sufficient to it and without granting any hearing.

Although technically the constitutional guarantee of confrontation in criminal prosecutions does not apply, the case for its use presented "grave

[45] Mr. L. V. Meloy, executive secretary, Loyalty Review Board, in letter to writer on Jan. 26, 1948.

[46] Mr. Meloy, in interview with writer on Dec. 30, 1947. A master index of investigations since 1939 will be maintained by the Civil Service Commission.

[47] Hearings, *op. cit., supra*, note 41, at p. 245.

considerations" to the Board. Serious critics, while accepting the FBI explanation, have suggested that although confidential informants may be used in the investigation, the record used by the board could be restricted to the testimony of those who could be confronted and examined —a procedure somewhat comparable to that necessarily used in some narcotics, sedition, and immigration prosecutions, even though conviction may be rendered more difficult.[48]

A more fundamental rebuttal is made to the point that government employment is a privilege rather than a right. The possible consequences of a finding of "disloyalty," or perhaps even of an unfounded allegation thereof, on the individual's future employment prospects—private as well as public—and on his reputation cannot be over-emphasized.

This problem has been underlined with reference to a segment of the loyalty question outside the scope of the program instituted by Executive Order 9835. The State, War, and Navy Departments have the statutory power to remove summarily any employee "in the interest of national security." This was given to the two military agencies in 1942 and extended to the State Department in 1946 on the assumption that these are more sensitive to the destructive influence of disloyal persons.[49]

The severe consequences potentially inherent in the use of this authority became clear in the highly publicized instance of the dismissal of ten State Department employees as "security risks" on June 23, 1947. The charges were not specified, on the ground that they were based upon highly classified material. Following the establishment of formal appeal procedures within the Department in July and review of the cases, three were permitted to resign without prejudice. After considerable press criticism, an appeal in their behalf by three prominent former administrative officials, and a determination that the newly created Loyalty Review Board did not have jurisdiction in the matter, the Department on November 17 allowed the other seven to take similar action. Its statement recognized the factor of a "possible injustice" to them (in terms of employment opportunity) if such were not done.[50]

[48] Cf., e.g., letter to the *Washington Post*, Jan. 17, 1948, from Mr. Abe Fortas former Under Secretary of the Interior.

[49] War and Navy: 56 Stat. 1053 (1942) (until six months after the official termination of war); State: 60 Stat. 453 (1946) ("McCarran rider" to the appropriation act). Executive Order 9835 excepted these laws from its applicability. The President's Temporary Commission on Employee Loyalty recommended that this authority be made permanent and extended to the Atomic Energy Commission. This was proposed in S. 1561 (by Sen. Gurney) on July 2, 1947, but the bill was not reported. The Atomic Energy Act, however, requires an FBI investigation of every employee of the AEC (60 Stat. 767). An effort has been made by Senator Knowland to require this also of the members of the AEC (Cf. *Cong. Rec.*, Feb. 2, 1948, 888).

[50] *New York Times*, Nov. 17, 1947. It was reported that they could have appealed to the Civil Service Commission for possible clearance for other "non-security"

An appraisal of the validity of the State Department's position in this entire situation will not be attempted; nor is it feasible to examine here the confused and seemingly partial statistical picture of dismissals made under this authority by the military agencies. While more recent developments seem to indicate that appeal to the Loyalty Review Board may be granted in such cases, and that the accused will be informed generally of the charges—except perhaps in "extreme" cases—a problem appears to remain. The wisdom of the use of the very inclusive term "security risk" has been seriously questioned. In defining this phrase on October 7, 1947, the State Department lumped together loyalty considerations with character weaknesses, such as habitual drunkenness.[51]

It has been asked whether it is just, or even necessary, to remove an employee from a "security" position by means of such a charge if there is no imputation of disloyalty, certainly a more serious blot than some more common character weakness. The necessity of such a method of removal, even assuming that the dismissal may be essential where a "security" position is involved, has been doubted, in view of the already established legal basis for discharging such persons.[52] Whatever may be the technical considerations, the expression "security risk" seems to imply, in the public mind, a basic element of disloyalty. At the least, the two labels should be clearly distinguished.

A final and perhaps most fundamental problem arising from the entire loyalty program is the effect it might have on the freedom of expression and the caliber of the federal service. This psychological factor is intangible and perhaps immeasurable. However, it has been emphasized that we live in difficult times and need bold, imaginative persons in government. In the field of atomic and other scientific research—to cite merely one area of governmental responsibility—it has been said that we need the free-thinking scientist, sometimes tending to be unorthodox. Although unquestionably loyal, he might be deterred from public service because of the risk of being misunderstood or branded.[53]

The ultimate hope for preventing such an atmosphere may lie in the Loyalty Review Board. Demoralization, apprehension, and encouragement of negativism and mediocrity in government can be checked only if there is confidence in the fairness, courage, and broadmindedness of those who have final responsibility for administering the loyalty program.

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government employment, but that they did not seek other government work. Space limitations prevent a review of the developments. See especially the articles in the *New York Herald-Tribune* by Bert Andrews during that period.

[51] Text of Security Principles, *New York Times*, Oct. 8, 1947.

[52] Cf. editorial, *Washington Post*, Nov. 8, 1947. Civil Service Commissioner Flemming is quoted as having stated that the Lloyd-LaFollette Act of 1912 provides adequate machinery for handling such cases.

[53] Cf. Sumner Pike, "Witch Hunting Then and Now," *Atlantic Monthly*, Nov., 1947, 93–4. The author is a member of the Atomic Energy Commission.

THE WHITE PRIMARY: 1944–1948

O. DOUGLAS WEEKS
University of Texas

I

The closing chapter in the history of the white primary in the South has seemed since 1944 to be in process of being written. In that year, the United States Supreme Court, by invalidating in Smith v. Allwright the white primary rule of the Texas state Democratic convention, dealt a stunning, if not immediately mortal, blow to this most significant political custom or practice of the Southern states. The refusal of this court on April 19, 1948, to review a federal circuit court decision invalidating the white primary arrangements of South Carolina, created in 1944 to circumvent the effect of the Allwright decision, seems to have administered the judicial *coup de grâce*.[1] It would, however, be unsafe to predict when "finis" may be set down for all states, political areas, counties, and voting precincts where by one means or another the Negro has long been barred from participation in the all-important primaries of the Democratic party. The remaining suffrage requirements, registration restrictions, and election provisions, and the political and administrative methods of applying them which still are employed in some Southern states and in parts of others in order to render it difficult for Negroes to vote will not be immediately eliminated. Moreover, the effects of political action have not been fully tested by the Democratic leaders of the South. At the present moment, plans for united efforts on their part are under consideration; and these could have far-reaching results before the end of the current presidential election year.[2] Whatever the abstract justice of the situation, traditional attitudes and customs cannot be uprooted easily and have a way of resisting judicial or legislative fiat, particularly when it is honestly felt by many that such fiat has been imposed from the outside and by people unaware of the difficulties and adjustments involved.

Be that as it may, remarkable changes have taken place both in the practical voting arrangements and in the viewpoints of many people within the South, and, as a result, large numbers of Negroes were admitted to the Democratic primaries of 1944 and 1946. The primary campaigns of those years, none the less, were seriously affected by the racial issue, and it may assume even greater importance during the present election year. Since 1944, most "liberal" politicians of the South have been more or less "guarded" in taking too advanced a stand. Ultra-conservative leaders, like Talmadge and Bilbo, have gone to extremes in defending "white

[1] Smith v. Allwright, 321 U. S. 649 (1944); Rice v. Elmore, 68 S. Ct. 905 (1948).
[2] *Austin* (Texas) *American*, Feb., 4, 1948, p. 1.

supremacy." Many persons, however, while apprehensive about the effects of precipitate reform, have sought to "soft pedal" the issue, with the attitude either of accepting the inevitable or of relying more or less on passive resistance. Officially, the active opposition to admitting Negroes to the Democratic primaries has assumed the forms of Democratic party action, legislative devices, adjudication, and constitutional amendment. Local administration of registration and election laws has also played its part, and various types of practical political pressure have been noteworthy in states and areas with large Negro populations. These efforts have been fought step by step by the National Association for the Advancement of Colored People and by a considerable number of other Negro organizations, as well as by various bi-racial and white associations sympathetic toward their cause. The national Administration and the national Democratic party have lent aid and comfort in various ways. Of recent importance in this connection have been the Report of the President's Committee on Civil Rights[3] and the President's so-called "Ten-Point Charter of Human Rights."[4] Mention might be made also of the persistent efforts in Congress over the past several years to pass the federal Anti-Poll Tax Bill, the civil rights plank in the Democratic platform of 1944,[5] and various reported activities of the Department of Justice in an effort to enforce Sections 19 and 20 of the U. S. Criminal Code.

It is with the efforts to resist the full impact of the Allwright decision, however, that we are here concerned. The entire story is complex and only the most significant developments can be summarized. With the situation in each state having its peculiar factors, it seems best to give separate consideration to each.

II

It is not necessary here to define the meaning of the term "white primary," to explain the white primary's origin and elaborate its variations from one Southern state to another, or to trace the evolution of its constitutional and legal status prior to the beginning of the present decade.[6] Suffice it to say that after a series of federal Supreme Court decisions beginning in 1927 and terminating with Grovey v. Townsend in 1935,[7] the barring of Negroes from Democratic primaries by party rule was apparently established on firm constitutional grounds, at least in states where

[3] *To Secure These Rights; Report of the President's Committee on Civil Rights* (Washington, 1947), submitted Oct. 29, 1947.

[4] *New York Times*, Feb. 2, 1948, p. 1.

[5] *Democratic Platform*, 1944, Sec. VII.

[6] For the previous history, variations, and legal status of the white primary, see O. Douglas Weeks, "The White Primary," *Mississippi Law Journal*, Vol. 8, pp. 135–153 (Dec., 1935).

[7] 295 U. S. 45 (1935).

the conditions surrounding it were similar to those in Texas, to which the decision applied—that is to say, where, as in Texas, the primary election was financed and administered by the party, even though minutely regulated by law, where the state supreme court had held either that the primary was not a public election or an integral part of the general election system or that the party holding it was a voluntary organization free to determine its own membership, and where the state party convention as the highest authority of the party had laid down the white primary rule. These were the conditions incident to the white primary's validity as set forth in the Grovey decision, and they obtained in whole or in part in half of the Southern states.[8]

Thus far, the federal Supreme Court had not held a primary to be an integral part of an election.[9] However, in United States v. Classic,[10] decided in 1941, this tribunal asserted that a primary in which candidates for Congress were nominated was a component part of an election process in which the general election was only the final step, and that Congress might regulate primaries for federal offices as a part of its power to legislate in regard to general elections for such offices. This case did not involve the white primary, but it prepared the way for Smith v. Allwright, which reversed Grovey v. Townsend. Essentially the same facts were involved in both of the latter cases. The white primary rule of the Texas state Democratic convention was now declared to be an act of the state, since the primary statutes of Texas created the convention which made the rule and provided in detail for its powers and procedures, as well as prescribing minutely the conduct of the primary elections. Needless to say, this reversal produced dismay and led to a wide variety of actions in the Southern states.

Resistance to the Allwright decision in Texas took the immediate form of an unsuccessful attempt on the part of the state attorney-general to secure a rehearing of the case.[11] While the state-wide white primary rule was abandoned for the 1944 Democratic primaries, the decision produced repercussions in the politics of the state. The Democratic convention, held in May, 1944, and controlled by the "regular" Democrats, condemned the decision and chose a national convention delegation and an electoral slate opposed to President Roosevelt. A bolting convention at the

[8] Waples v. Marrast, 184 S. W. 180 (Tex., 1916); Bell v. Hill, 74 S. W. 2d 113 (Tex., 1934); Robinson v. Holman, 26 S. W. 2d 66 (Ark., 1930); Norton v. State, 63 S. E. 662 (Ga., 1909); State v. Huntley, 166 S. E. 637 (S. C., 1932); and Wood v. State, 142 So. 747 (Miss., 1932).

[9] The issue was met indecisively in Newberry v. United States, 256 U. S. 232 (1921).

[10] 313 U. S. 299 (1941).

[11] Rehearing denied, May 8, 1944.

same time selected pro-Roosevelt delegates and electoral candidates.[12] Later in 1944, after the September state Democratic convention had nominated a pro-Roosevelt electoral ticket which was upheld by the state supreme court as the official Democratic electoral list,[13] the "regular" Democrats became the "Texas Regulars." Antagonisms thus created continued into the primary elections of 1946. It may be added that the only suffrage restriction in Texas directed in part against the Negro is the poll-tax requirement, and Negroes have long been otherwise free to vote in general, municipal, and school elections in many localities. Since 1944, Negroes have been paying their poll taxes in greater numbers and have been admitted to Democratic primaries more or less freely in many counties.

Less direct resistance seems to have obtained in Louisiana, North Carolina, and Virginia. The Democratic party of Louisiana early repealed its white primary rule. North Carolina is reported to have had only local rules in some counties. Negroes have voted heavily in Democratic primaries in Virginia, at least recently. All three states, however, have the literacy test, which has probably operated, particularly in Louisiana, to prevent the registration of many Negroes. Louisiana also conditions registration upon "good character," capacity to "understand the duties and obligations of citizenship," and ability "to fill out and sign the blank application for registration . . . without assistance or suggestions from any person or any memorandum whatever. . . . " Illiterates may be registered if they can "understand and give a reasonable interpretation of any section of either constitution (federal or state)."[14]

III

In Florida, action in the state courts was necessary to open the Democratic primaries to Negroes. On July 24, 1945, the supreme court decided that a Negro, otherwise qualified to vote under state law, was entitled to be registered as a Democratic elector notwithstanding the resolution of the state Democratic executive committee to the effect that only white persons "should be declared and taken as proper members of the Democratic party of the state." Smith v. Allwright was relied on as controlling authority.[15]

[12] Both delegations were seated in the Democratic national convention of 1944, although the "regular" delegates had threatened to bolt unless the national platform supported "white supremacy."

[13] Stanford v. Butler, 181 S. W. 2d 269 (Tex., 1944); Seay v. Latham, 182 S. W. 2d 251 (Tex., 1945).

[14] Registration Laws of Louisiana, 1946, Art. II, Secs. 1, 6. See also Courtney v. Singleton *et al.*, 27 So. 2d 448 (La., 1946), and Hall v. Nagel, 154 F. 2d 931 (1946).

[15] Davis v. State *ex rel.* Cromwell, 23 So. 2d 85 (Fla., 1945).

Practical obstruction to Negro voting in primaries was reported as taking place in 1944 in various parts of Alabama. In 1946, the state Democratic executive committee voted to open the party primaries to Negroes.[16] Meanwhile, however, the legislature had initiated, in 1945, the so-called Boswell amendment to the constitution of the state, which was ratified in November, 1946. This amendment added the words "understand and explain" to the literacy requirement for registration, and also appended the provision that "no persons shall be entitled to register as electors except those who are of good character and who understand the duties and obligations of good citizenship under a republican form of government." In addition, property qualifications as alternatives to the literacy test were repealed.[17]

In a case involving failure to register a Negro citizen in Alabama, decided early in 1947 by a federal district court, it was held that, while registration cannot be denied because of race, racial discrimination is not established by showing mere irregularities or inefficiency on the part of a board of registrars. That Macon county, from which the case arose, was 82.1 per cent Negro was not regarded as proof *per se* of racial discrimination. The Alabama statutes permit the board of registrars to "make such rules and regulations as it deems proper for the receipt of applications for registration." In a previous case involving the same facts, the federal Supreme Court had denied *certiorari*.[18]

In Arkansas, the state Democratic committee responded to the Allwright decision in July, 1944, by amending the party rules so as to permit primary election officials to challenge Negroes on grounds of "party loyalty." Later in that year, the committee acted to admit Negroes to the primaries "if they meet party loyalty requirements," but still excluded them from party membership.[19] In 1945, however, the General Assembly provided for separate primaries for federal offices at which "no citizen shall be denied the right to vote . . . on any ground prohibited by the Fifteenth Amendment to the Federal Constitution." It was further provided that the costs of the federal primary should be borne by the counties, whereas those of the state and local primaries continued to be a charge on the party.[20] After being applied in one election, the act was re-

[16] *New York Times*, Jan. 13, 1946, p. 37.

[17] Amendment to Sec. 181, Constitution of Alabama, General Laws, Alabama, 1945, pp. 551–552; *New York Times*, Nov. 6, 1946, p. 8. Recent reports from Alabama indicate that the N.A.A.C.P. has plans under way to undermine the Boswell amendment. *Ibid.*, Oct. 5, 1947, p. 56.

[18] Mitchell v. Wright *et al*, 69 F. Supp. 698 (1947); Mitchell v. Wright, 154 F. 2d 924 (1946); Wright v. Mitchell, 329 U. S. 733 (1946). See also Williams v. Wright *et al*, 29 So. 2d 295 (Ala. 1947).

[19] *New York Times*, July 9, 1944, p. 30, and Sept. 17, 1944, p. 40.

[20] Acts of Arkansas, 1945, Act 107, p. 253.

pealed in 1947, and nominations for Congress are again to be made in the regular primary.[21] While the separate primary was in effect, its validity was upheld by the supreme court of Arkansas under the proper provisions of the federal and state constitutions. In the course of its opinion, the court called attention to the optional character of the primary in Arkansas in contrast to the mandatory primary in Texas, but stated that "however revolutionary this decision [Smith v. Allwright] may be, it stands as the law of the land, and is as binding upon us as it is upon the state whose primary election law was there invalidated."[22] The governor of Arkansas stated, however, before the primaries of 1946 that Negroes were not to be permitted to vote in the separate state and local primaries, and the state attorney-general so announced.[23] Registration of Negroes for 1946 was reported as heavy, although attempts were made, it is alleged, to dissuade many from voting.[24]

IV

Efforts to maintain the white primary were more extended and complex in Georgia, Mississippi, and South Carolina. It is true that in 1944 Georgia repealed her constitutional poll-tax requirement for voting and otherwise liberalized her suffrage provisions; but at the same time all constitutional provisions pertaining to primaries were deleted,[25] the latter as a first step to removing primaries from state control. Meanwhile, the state Democratic committee, assuming that the Allwright decision did not apply to Georgia,[26] in its call for the Democratic primary of 1944 enacted the rule that "all white electors who are Democrats and qualified to vote in the general election, and who in good faith pledge themselves to support the Democratic candidates for all the offices to be voted on this year, are hereby qualified to vote in such primary."[27] As a result, Negroes were generally refused primary ballots.

A Negro—a qualified and registered voter—who was denied participation in this primary was sustained by a federal district court in his right to vote for congressional candidates.[28] Upon appeal, the Fifth U.S. Circuit Court advanced the doctrine that, while parties may limit their membership, the state of Georgia has not left party primaries wholly to the various parties, but has recognized the "great importance to the pub-

[21] Acts of Arkansas, 1947, Act 14, pp. 23–24.
[22] Adams *et al.* v. Whittaker *et al.*, 195 S. W. 2d 634 (Ark., 1946).
[23] *New York Times*, Apr. 7, 1946, p. 36, and July 15, 1946, p. 14.
[24] *Ibid.*, Aug. 5, 1946, p. 5.
[25] Constitution of Georgia, 1945, Art. II, Sec. 1, Par. 5.
[26] *New York Times*, June 8, 1944, p. 38.
[27] Quoted in Chapman v. King, 154 F. 2d 460 (1946).
[28] King v. Chapman, 62 F. Supp. 639 (1946).

lic of the results of a primary held by a numerous party, and has protected and regulated such primaries almost exactly in the same way it has regulated elections by the people." "The state," the opinion continues, "does not require a primary in any case, nor itself choose the primary managers, nor bear any of the expenses of the primary," and hence is in a different position from Texas and Louisiana where the primary is mandatory. Therefore, the Allwright and Classic cases, it was held, applied, respectively, to the conditions in those states and did not fit the facts in Georgia where the primary is optional. "But," adds the court, "there are features of the Georgia laws which seem to us to show that the state, when any party calls a primary, associates itself with the party holding it, and adopts the result as authenticating the successful candidate to be the nominee of the party for the official election ballot." Thus the state "adopts the primary as a part of the public election machinery. The exclusion of voters made by the party in its primary rules becomes the exclusion enforced by the state, and when such exclusions are prohibited by the Fifteenth Amendment because based on race or color, the persons making them effective violate, under color of state law, a right secured by the constitution and laws of the United States. . . ."[29] Thus the court accepted the authority of the Allwright decision, but left the way open to the state to repeal all primary laws (as the state constitution now permitted, and as South Carolina had done in 1944) and thereby relinquish the whole matter of nominations to the party, whose right to control its own membership was left intact. Soon afterwards, the federal Supreme Court refused to review this decision by denying *certiorari*.[30]

The state Democratic executive committee let down the bars for the primary of 1946, and nearly 125,000 Negroes were registered (100,000 are supposed to have voted). Many attempts were made to dissuade Negroes from voting, and they were challenged in a wholesale fashion. While the Negro vote helped elect a congresswoman from the fifth Congressional district whose opponent had declared for "white supremacy," the bitterness of the gubernatorial campaign is well known.[31] Eugene Talmadge proclaimed the doctrine of "white supremacy" and promised that "no Negro will vote in Georgia for the next four years."[32] In a post-primary meeting of the state Democratic convention on October 9, 1946, a white primary rule was enacted.[33] Following this, a bill was passed in 1947

[29] Chapman v. King, 154 F. 2d 460 (1946).

[30] Chapman v. King, 66 S. Ct. 905 (1946).

[31] Consult *New York Times*, Jan. 13, 1946, p. 3; Feb. 13, 1946, p. 7; June 15, 1946, p. 3; July 4, 1946, p. 32; July 12, 1946, p. 15; July 14, 1946, p. 29; July 18, 1946, p. 1; and Sept. 7, 1946, p. 28.

[32] Talmadge was nominated, but died before taking office. The dispute over his successor need not be considered here.

[33] To operate under the county unit system. *New York Times*, Oct. 10, 1946, p. 24.

by both houses of the General Assembly "to revise the election laws and to repeal all laws or parts of laws providing the method and manner of holding primary elections by a political party, organization, or association for the purpose of choosing or selecting candidates for office"; but it was vetoed by the governor on the ground that it would "allow fraud and stolen elections to run rampant in Georgia."[34] Subsequently, the state Democratic rules committee adopted a "white primary" under which Negroes will vote in separate buildings from white voters.[35]

V

The Allwright decision had practically no effect in the Mississippi primary election of 1944. By 1946, however, the situation had changed. As explained by the Special Committee to Investigate Senatorial Campaign Expenditures in its majority report on the primary campaign of Senator Bilbo, several factors were responsible. The report stated that "due to the influence and intervention of certain out-of-the-state organizations, attempts were made to organize the Negroes and urge them to go to the polls and participate in the July 2 Democratic primary. These attempts were further facilitated by the passage in April, 1946, by the Mississippi state legislature of an act exempting all veterans, without reference to whether they were colored or white, from the payment of a poll tax for the 1944–45 period if they were in the armed services. The combination of these elements, together with agitation by certain radio commentators and correspondents from outside the state, and the return to Mississippi of large numbers of Negro veterans, contributed to a situation . . . in which great interest in this primary was exhibited on the part of both whites and Negroes."[36]

The vituperative campaigning of Senator Bilbo and his supporters in behalf of white supremacy, the suffrage and election laws of the state, and the habitual methods of administering them, however, operated in 1946 to prevent the registration and primary participation of an overwhelming majority of Negroes. Since the adoption of the constitution of 1890, the literacy and other suffrage restrictions therein provided had served to bar the few Negroes who may have attempted to register; for the rest, "common knowledge" and "custom" were sufficient. The primary election law afforded another obstruction, if needed. It restricted participation in a party primary to the voter who intends to support all nominations made

[34] Acts and Resolutions of the General Assembly, Georgia, 1947, pp. 23–66. Attempts to repeal primary statutes in several other Southern states have failed for reasons similar to those expressed by the governor of Georgia.

[35] Sept. 22, 1947.

[36] Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946, 80th Cong., 1st Sess., Report No. 1 (Washington, 1947), Part II, p. 14.

thereat, who has been in accord with the party holding such primary within the two preceding years, and who "is not excluded by any regulation of the state executive committee of the party holding such primary." Any party member or any primary election officer could challenge any person offering to vote, and cause him to answer, under oath, questions relating to his qualification.[37] The state Democratic executive committee, however, had promulgated no white primary rule, and after the Allwright decision, had unanimously decided that the Negro had a legal right to vote in the Mississippi Democratic primary; though, as one of its members testified: "We didn't tell the darkies that . . . he had a legal right to vote, but as I say, we thought he ought not to vote."[38]

To strengthen the above primary statutes, however, the Mississippi legislature in 1947 authorized state executive committees of parties holding primaries to "make reasonable rules and regulations that will insure a fair primary" and empowered county executive committees to hold new registrations of party members and to appoint assistant managers in precincts to hear complaints of challenged voters—the county executive committees to make final decisions as to persons denied participation in primaries. No person is to participate in a primary who is not "in accord with the principles of the party" as proclaimed by its state executive committee.[39] The possibilities of these provisions are obvious.

VI

The reaction to the Allwright decision in South Carolina was immediate and the attempt to circumvent it most determined. Within a few days after the decision, a special session of the General Assembly, called for the purpose,[40] repealed "each and every provision in the laws of this state authorizing, recognizing, or regulating the organization of political parties . . . and the primaries, elections, or nominations in primary elections for a federal, state, county, or municipal office, or for any office in any other political division. . . . "[41] The same session initiated a constitutional

[37] Mississippi Code, 1943, Sec. 3129.

[38] *Report*, Part II, p. 23.

[39] General Laws of Mississippi, 1947, H. B. 36, H. B. 38.

[40] On February 29, 1944, the lower house had reaffirmed its belief in "established white supremacy." Immediately after the decision, Senator Maybank of South Carolina warned the United States Senate that his state would retain its political and social institutions, "as we believe them to be in the best interests of our people, regardless of any Supreme Court decision or any law that may be passed by Congress." Governor Johnston, in his proclamation calling the special session, stated: "I know that the white Democrats of South Carolina will rally behind you in the matter of repealing all primary laws. . . . Should this prove inadequate, we South Carolinians will use the necessary methods to retain white supremacy in our primaries to safeguard the homes and happiness of our people." See *New York Times*, Apr. 14, 1944, p. 1, Apr. 18, 1944, p. 13.

[41] Acts and Joint Resolutions, South Carolina, 1944, Sec. 2323, p. 2241.

amendment striking out the words: "The General Assembly shall provide by law for the regulation of party primary elections and punishing fraud at the same."[42] The amendment was subsequently ratified. This was a new and drastic departure in the history of the direct primary, designed to circumvent in thorough fashion the effect of the Allwright decision. In fact, the courts would be forced to find a new and broader doctrine if the new arrangements in South Carolina were to be judicially undermined.

This doctrine was found by a federal district court in South Carolina in Elmore v. Rice, decided on July 12, 1947.[43] On the following December 30, the Fourth U.S. Circuit Court of Appeals sustained the decision. The federal Supreme Court on April 19, 1948, in a formal order refused to review the latter ruling.[44] Elmore was qualified to vote in South Carolina, but was deprived of voting on account of race in the Democratic primary by the party rules which now completely controlled it. The district court stated: "We need hardly look back of 1941 when the famous case of U.S. v. Classic was decided and a few years later in 1944 Smith v. Allwright. These two cases now completely control and govern the matters under discussion." The court relied particularly on a statement in United States v. Classic which reads: "Where the state law has made the primary an integral part of the procedure of choice, *or where in fact the primary effectively controls the choice*,[45] the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Art. I, Sec.2." Chapman v. King, the Georgia case, was also cited as authority. The court then compared the situations in South Carolina before and after the repeal of the primary statutes and concludes that there was no substantial difference between them. After the repeal, the state democratic convention acted to embody all the former statutory provisions into the party rules. Thus the Democratic party occupies the same determining position that it had under the primary statutes. The party cannot be treated as a private business or a social club—it is the determining body in the choice of national and state officers in South Carolina. "It is time," concludes the court, "for South Carolina to rejoin the Union. It is time to fall in step with the other states and adopt the American way of conducting elections." In upholding this decision, the federal circuit court added little, except to say that "no election machinery can be upheld if its purpose or effect is to deny to the Negro, on account of his race or color, an effective voice in the government of his country or the state or the community wherein he lives." The reasoning of the lower courts was in effect accepted by the federal Supreme Court.

[42] *Ibid.*, p. 2344, Constitution of South Carolina, Art. II, Sec. 10.
[43] 72 F. Supp. 516 (1947).
[44] Rice v. Elmore, 165 F. 2d 387 (1947), 68 S. Ct. 905 (1948).
[45] Italics added.

Thus, it would seem, the white primary proper is judicially ended. Certainly, no further efforts will be made to repeal primary statutes in order to place primary elections beyond the law, such as those unsuccessfully attempted in Florida, Georgia, Louisiana, Mississippi, and Texas between 1944 and 1948. The decision will not, however, dispose of all remaining suffrage and registration hurdles in the way of the Negro, nor will it insure that his vote if cast will always be counted. There will need to be legislation and litigation if these obstacles are to be removed. The President's Committee on Civil Rights has advocated the strengthening of national administrative machinery for the protection of suffrage and other rights, the establishment of a permanent Commission on Civil Rights and a Joint Standing Committee on Civil Rights in Congress, the enactment of the federal Anti-Poll Tax Bill, and the enactment of Congressional legislation to protect the right of qualified persons to participate in federal and state primaries and elections.[46] In his recent support of these and other accompanying recommendations, the President seems to have injected them deeply into both national and Southern politics. Under present political conditions, the possibilities of their realization in the near future are not clear. The history of the white primary, therefore, has not been entirely completed.

[46] *Report*, pp. 151–173.

THE RISE OF NEGRO VOTING IN TEXAS[1]

DONALD S. STRONG
University of Alabama

Since Negro voting, or the fear of it, is the central issue around which so many other aspects of Southern politics are oriented, it is highly relevant to examine the emergence of Negro voting wherever it occurs in a Southern state. In Texas, the federal Supreme Court's "white primary" decision of April, 1944 (Smith v. Allwright), removed the most formidable barrier to Negro participation in politics and resulted in the entry of a significant number of Negroes into the electorate in 1946. Although Texas, with its relatively small Negro population (14 per cent) may not be an exact barometer to guide us in foreseeing the emergence of Negro voting elsewhere in the South, no one interested in predicting the future of this ticklish question can afford to ignore the Texas experience.

The exclusion of the Negro from Texas political life has never been

[1] Material not otherwise footnoted was gathered from personal interviews with white and Negro politicians in Texas in the summer of 1947. All data constitute a small part of a comprehensive, two-year study of the electoral process in the South undertaken by the Bureau of Public Administration at the University of Alabama.

complete. Texas has made use of neither the literacy or "understanding" test nor the involved registration procedures so effectively employed to limit Negro participation elsewhere in the South. In Texas, the white primary, the poll tax, and such extra-legal factors as an environment hostile to Negro assertiveness have been the only means used. The Negro has been categorically excluded only from the Democratic primary, the election that really counts. Thus, poll-tax paying Negroes have been legally eligible to vote in general elections, municipal elections, school board elections, special elections, and proposition elections concerning some special issue such as local option on liquor. Even the state-wide white primary is of fairly recent origin; it was only in 1923 that the Texas legislature passed a law barring Negroes from the Democratic primary, thus inaugurating the legal battle that produced the four Supreme Court cases on this issue. Before 1923, the Terrell election law[2] provided that "the county executive committee of the party holding any primary election may prescribe additional qualifications necessary to participate therein." This gave each county Democratic committee the power to say whether or not a voter needed the "additional qualification" of being white. Throughout the two decades prior to the act of 1923, Bexar county (San Antonio) Negroes were permitted to vote in primaries and constituted an important part of the local machine. In fact, the new law in 1923 was in part an effort to undercut the power of the Bexar county boss, who had the support of the Negro voters.

Since municipal elections are conducted on a non-partisan basis, they never were subject to the Democratic primary;[3] and Negroes have long been of political significance in such elections in Dallas, Fort Worth, San Antonio, Galveston, Port Arthur, and Houston.[4] Participation in general elections ran rather high. Myrdal estimates that 50,000 Negroes voted in the 1940 presidential election.[5] In the 1942 Congressional election, a careful estimate of the participation in the counties with the highest Negro population puts the figure around 33,000.[6] This bothering to vote in the meaningless general election may be explained in part by the legal requirement in effect until very recently that the poll tax must be paid along with the general property tax. The result was that a Negro owning

[2] *General Laws of the State of Texas Passed at the Regular Session of the Twenty-Eighth Legislature, 1904*, pp. 133–159.

[3] An exception here is Houston, which had a white primary before the municipal election.

[4] Writing in 1932, Paul Lewinson, in his *Race, Class, and Party* (New York, 1932), p. 147, observes that in these cities the campaign for Negro votes in municipal elections was quite open.

[5] Gunnar Myrdal, *An American Dilemma* (New York, 1944), p. 475.

[6] William M. Ellison, Jr., *Negro Suffrage in Texas and Its Exercise*, unpublished M. A. thesis, Colorado State College of Education, 1943.

any real property was compelled to qualify himself to vote in the general election. The psychology of "getting one's money's worth" may explain some of this participation in an unimportant election. All the foregoing indicates that the entrance of Negroes into the Texas primaries was not a revolutionary break with the past. The change was to permit participation in the election that counts—to permit Negro players in the major league.

Since Smith v. Allwright was decided in April, 1944, three months after the deadline for poll-tax payment and only three months before the July primary, there was no opportunity to get additional Negroes to qualify and not too much time in which to organize those who had qualified. The year 1946 was different. An intelligent estimate is that at least 75,000 Negroes voted in the Democratic primary of that year. It would be unfair not to underscore the term *intelligent estimate*. Texas does not have separate polling places for Negroes. The state has no registration system, and hence no statewide records on voters. Although one designates his race when paying his poll tax, the tax assessors in the 254 counties make no official computation of qualified voters according to race. If they did so, it still would not indicate how many Negroes actually voted. The figure 75,000 is merely the estimate of several well-informed politicians.[7] But voting in the primary was not the only indications of increased Negro political activity. For the first time, Negro delegates were selected to the county Democratic conventions in Dallas, Travis (Austin), and Harris (Houston) counties. Negro poll tax deputies were appointed by the county tax collector's office in Dallas, Tarrant (Fort Worth), Harris, and Travis counties. Dallas had no fewer than 28 Negroes deputized to collect poll taxes, Houston 18. Finally, some Negro Democratic precinct chairmen turned up in the colored precincts of the big cities—three in Dallas, five in Houston, two in Galveston, and one in Port Arthur.

How has the white population reacted to this situation? One immediately wonders whether new versions of the white primary have been attempted or whether white Texans, having failed in their legal dodges, have resorted to extra-legal procedures. The surprising fact seems to be that there have been no serious, organized efforts to circumvent the Supreme Court; and Negro voting appears to be on its way toward full acceptance.

In the days immediately following the Allwright decision, Texas newspapers quoted various politicians as suggesting that Texas abandon the direct primary and revert to the convention system of nomination, which had prevailed prior to 1907. These suggestions apparently did not meet with a favorable reception, for nothing more was ever heard of them. In

[7] See, for instance, the estimate of then Governor Coke Stevenson in the *San Antonio Express* of July 29, 1946.

the 1945 session of the legislature, a white-primary bill on the South Carolina pattern was introduced in the senate and given a favorable vote in committee; but it never got beyond that stage. Apparently, after the bitter struggle within the party over the 1944 electoral college vote each faction distrusted the other too much to risk removing all legal control over the conduct of primaries and vesting their control solely in the party. In 1947, when another such bill was introduced in the lower house, it was pigeonholed and never acted upon by committee. This inaction may be explained by the fact that a member of the committee to which it was assigned was indebted to Houston Negro support for his election. In short, there has been no determined effort to revive the white primary.

Nor does there seem to have been much extra-legal activity. Since I expected to find resort to extra-legal practices, I questioned all Negro leaders I interviewed very closely on this matter. I asked specifically about beatings, threats, or revivals of Ku Klux Klan activity. My Negro informants were emphatic that there has been none of these cruder forms of violence, and my white informants agreed with them. The few instances of extra-legal restraints I discovered were much closer to the border line of legality. Thus, in the city of Marshall, in East Texas, a unit of the National Guard was somehow called out on election day and guardsmen stationed at each voting booth to exclude Negroes. When Negro leaders began to request the individual guardsmen to sign affidavits and to go through other steps designed to start a legal proceeding, the guardsmen were withdrawn by mid-morning. Apparently this was a bluff based on a hope of Negro ignorance; when Negro leaders manifested familiarity with the law, the bluff was speedily called. Another instance took place in Colorado county, where the voter in the Democratic primary is presented with two ballots, one bearing the names of candidates for state-wide offices and the other of candidates for county-wide offices. White voters receive both ballots, but Negro voters are given the ballot of state-wide candidates only. Apparently the greatest fear is that the Negro may exercise some power within the county. This version of the white primary, sponsored by the county Democratic committee, would be clearly illegal under the Allwright case if it were brought to court. A third incident involved the city of Waxahachie. Here the pay-your-poll-tax campaign carried on by Negroes in nearby Dallas aroused so much response among the local Negroes that more Negroes than whites were qualified to vote in the city election of 1947. White citizens had characteristically refrained from paying their poll taxes on an off-year when only city officials were to be elected. This Negro majority of the electorate took both whites and Negroes by surprise. The result was that city officials simply told the Negroes that they would not be permitted to vote. Since exclusion from a municipal election was unprecedented, the Negroes were caught unpre-

pared with any legal remedy. The significance of these three instances of illegal interference is not that they took place. Rather, the significant fact is that diligent inquiry among well-informed Negroes and whites uncovered only these three cases.

The absence of any overt hindrances to Negro participation does not mean that the Texas public has suddenly been won over to a unanimous approval of Negro participation. A public opinion poll conducted by the Texas Institute of Public Opinion in the spring of 1946 throws some further light on the attitude of whites toward Negro voting. The managers of the poll profess to follow the scientific-sampling methods of Dr. George Gallup, and they have sold enough Texas newspapers on their accuracy to have made their poll a going concern over several years. Their finding was that 44 per cent of all white Texans interviewed believed that "colored people should have the right to vote in the Democratic primary;" 49 per cent thought that they should not. A higher percentage of those tolerant toward Negro voting lived in the western half of the state where there are few Negroes. In the eastern half, where most Negroes live, 55 per cent disapproved of Negro voting and only 38 per cent approved of it.[8] Despite these attitudes as reported to the pollsters, Texas foes of Negro voting lacked the intensity of feeling, or perhaps the necessary leadership, to find methods to disfranchise the Negro anew by legal or extra-legal means.

This type of public opinion poll fails to measure intensity of opinion. A crude index to such intensity is the reaction of white Texas politicians whom I interviewed to the subject of Negro voting. All were able to discuss Negro enfranchisement without displaying any strong feeling. This is in marked contrast to my interviewing experience in Louisiana, where inquiries about Negro participation sometimes caused an otherwise mild interviewee to cloud up and talk grimly about enfranchisement leading to social equality and miscegenation. I regard the absence of such preoccupations on the part of Texas politicians as signifying an acceptance of, or a resignation to, Negro participation.

The extent of Negro participation in the 1946 primary does not show a sharp increase over such participation in earlier elections. Nothing occurred to give grounds for the fear that Negroes would be thirsting for the ballot after their long period of disfranchisement and would rush to the polls in a near one-hundred-per-cent turnout. The estimated 75,000 colored voters is about 14 per cent of the potential Negro electorate of 540,000 as given by the 1940 census. If as many as 100,000 Negroes actually voted, it would be only twenty per cent. White participation in Texas hovers around one-third of the potential white electorate. It is not

[8] *American Statesman* (Austin), June 23, 1946.

a question of Texas Negroes turning out to vote to the last man. Rather, it is a question of their leadership overcoming political indifference and driving home the importance of voting.

Diligent inquiry about the kinds of Negroes who vote brought out only the fact that the urban Negro is the most active politically. Negro leaders did not profess to see more interest in politics among the youth, veterans, males, or any other identifiable group. An exception was the Dallas leader who thought that there might be greater interest among younger persons. However, the greatest amount of Negro voting is found in the larger towns and cities. Colored leaders explain this by the fact that the urban Negro is organized in lodges and fraternal orders, thus making him readily accessible for political purposes. The geographically isolated rural Negro is not so well organized. Another explanation offered by a veteran colored politician is that "the city is the only place where the Negro begins to get any pretense at police protection." This came from the same man who had earlier assured me that there had been practically no extra-legal restraint in the 1946 primary. One might infer that although no actual instances of terrorism took place in connection with the 1946 primary, the rural Negro realizes that there is nothing to prevent such occurrences and hence prudently remains away from the polls. Although no Negro leaders mentioned this, another reason must surely be the city dwellers' experience with voting in the non-partisan municipal elections.[9]

Negro political activity takes place through a variety of organizations. Cities like San Antonio and Houston have political groups that antedate the 1944 decision; and these function solely within the city and have no state-wide ramifications. A newer outfit, the Progressive Voters League, has a state-wide organization and claims to have some forty chapters. Its Dallas chapter is active enough to have a full-time, paid secretary. The Texas Club of Democratic Voters also claims to have chapters in several cities throughout the state.

A uniform activity of all of these groups is encouraging poll-tax payment. Very impressive pay-your-poll-tax campaigns are carried on. Churches are used as a channel to reach the Negro public and to urge the importance of qualifying to vote. Other organizations such as the National Association for the Advancement of Colored People and the schools cooperate in the educational campaign. The appointment of Negro poll-tax deputies helps the process along. In Dallas, such deputies go from door to door to make collections. The high degree of success attending these campaigns is an interesting commentary on the popular justification of the poll tax on the ground that "you got to have the poll tax to keep the

[9] Lewinson, describing the situation prior to 1932, observed that whatever Negro voting occurred in the South took place in the cities. See *op. cit.*, pp. 132–138.

nigger from voting." The poll tax is in itself no insurmountable barrier to Negro participation in a situation where he has leaders who urge him to pay the tax and when, perhaps, full employment and high wages make the sum of $1.75 seem trifling.

Endorsement of candidates and an effort at block-voting is another standard practice. Although Negro leaders realize that block-voting has its bad points, they rationalize the practice by saying that unless politicians can be made to feel that there is a solid Negro vote that will reward its friends and punish its enemies, the result of enfranchisement will be simply an increase in the electorate. The Progressive Voters League rationalizes its endorsement by insisting that there is not a separate white man's interest and a conflicting Negro interest. This organization has a liberal or progressive slant to its ideas, and its leaders insist that they endorse candidates who will advance the best interests of the majority of the people, which includes the Negro people.

Although the procedure of endorsement is not uniform, in most instances the outstanding leaders are constituted as a committee to look over the candidates. On a city level, this is done presumably on a basis of elected representatives from each ward. Thus, in Travis county (Austin) it is explained that each ward sends three delegates to a county-wide meeting to discuss candidates. Any delegate may champion any candidate and argue his case. His record is examined and discussed, and the subsequent debate sometimes lasts far into the night. Some candidates have attempted to approach Negro leaders on the basis of what there might be in it for them financially, but they have promptly sensed that these new Negro leaders are playing the game straight. In a form letter dealing with a councilmanic election, the "fact-finding committee" of the Dallas Progressive Voters League advised the membership that it had "interviewed and traced the past records of the entire group of candidates." Delegates from the local chapters of the two state-wide organizations meet and endorse candidates for state-wide offices. The foregoing probably pictures endorsement as a more systematic and popularly-controlled process than it really is in many cases. Certainly in San Antonio, where most Negro voters follow the leadership of Negro boss Valmo Bellinger, the process of selecting a candidate for endorsement is much simplified.

Once a decision for endorsement is made, the word is passed down the line and conveyed at political rallies. Leaders claim that rather strict adherence to the recommended candidates has resulted so far, but there are exceptions. Negroes in Governor Jester's home town of Corsicana felt so much home-town pride in a local boy that many of them voted for him despite the endorsement of his opponent, and the San Antonio unit of one Negro organization was unable to stomach the endorsement of Senator Tom Connally and backed a long-shot candidate instead.

To implement this endorsement of candidates, schools in the marking of ballots are conducted. Marking a Texas ballot is somewhat complicated. You must cross out the names of all but the candidate you prefer, instead of placing a cross before the name of the candidate you favor. Apparently this explicit instruction pays off, because one Negro leader told me with some little pride that there were fewer spoiled ballots in the Negro precinct than in some of the silk-stocking white precincts. In Dallas, where voting machines are used, instruction is given in the use of these devices.

The foregoing may give an impression of a greater degree of solidarity in the Negro community than actually exists. Numerous Negroes with political inclinations aspire to positions of leadership in the Negro community; hence there are numerous prima donnas and a degree of factionalism revolves around the personalities of particular leaders. An investigator has to be somewhat wary and careful to uncover all individuals who profess to be the official spokesmen for the Negro community. In a few instances, the rivalry has broken out into the endorsement of opposing candidates. In April, 1947, Maury Maverick's candidacy for mayor of San Antonio was opposed by Negro boss Bellinger, who has always worked with the city machine, whereas the local unit of the Progressive Voters League, speaking for the minority, endorsed Maverick. The Texas Club of Democratic Voters, alone among Negro groups, supported the candidacy of Jester for governor.

In yet another respect it is possible to overstate the importance of block-voting and Negro voting solidarity. The Texas primary ballot lists candidates for some 35 offices ranging from United States senator to precinct committeeman. At the same time, Texas election law forbids a voter to take into the polls with him a marked sample ballot or any other form of memory aid;[10] and this law is enforced. Thus, the number of candidates that can be profitably endorsed is limited by the memory of the average voter. Negro groups do not attempt to endorse more than a half-dozen candidates.

The offices for which endorsement is made give insight into Negro political interest. Candidates for governor and United States senator are endorsed. On the local level, great importance is attached to the offices of sheriff and district attorney. Repeatedly my Negro informants pointed out that a sheriff who felt some obligation to Negro voters would not beat up all Negro suspects just as a matter of routine. The district attorney is important because of what is delicately called "the high homicide rate among Negroes." A district attorney obligated to Negro voters will be less likely to ignore murders in the colored district on the ground that "it's just one less nigger and that's a damn good thing," or to drop prosecution of a Negro suspect because of the pressure of white friends.

[10] *Revised Civil Statutes, 1925*, Art. 3009.

One tactic rarely used to date has been that of Negroes running for public office. In 1944, a Negro was a candidate for the Dallas school board because the Negroes felt that they were being discriminated against in the allocation of educational funds. The school board election occurs in April and usually goes by default with only a handful of participants. The presence of a Negro candidate on the occasion mentioned so aroused the Dallas voters that they poured out to the polls in record-breaking numbers for a spring election and overwhelmed the colored candidate. However, a school board election in San Antonio on April 3, 1948, had a different outcome, actually resulting in the election of a Negro to membership on the San Antonio Union Junior College District board. Although the junior college has both white and Negro branches, it has a single governing board which until now has always had an all-white membership. The successful Negro candidate is G. J. Sutton, a well-educated and intelligent Negro, long a leader in the Progressive Voters League. The circumstances surrounding his election are of some interest. Latin-Americans and Negroes joined hands, each agreeing to support the other's candidate, with the result that each group succeeded in electing a member of a local educational governing board. Gus C. Garcia, a smart young Latin-American lawyer, unified the Latin vote solidly behind him and was elected to the San Antonio Independent School District board of trustees with votes to spare, while at the same time influencing enough of his followers to vote for Sutton to squeeze the Negro into the junior college board by 27 votes.

For whom do Texas Negroes vote? In terms of party, they vote almost solidly Democratic; one has to search long to discover a Republican. Only a few of the older people are still loyal to the Republican party. For their part, the Republicans have made no gesture since 1920 to attract the Negro vote. They have none of the Negro membership on the state central or congressional district committees that one finds in some Southern states, such as Louisiana. In fact, Texas Republicans register some satisfaction with their convention system of nomination, and they were reported in the newspapers as being a little amused when the Supreme Court compelled the Democrats to open their primary to Negroes. One veteran Negro politician informed me that his first form of political activity in the mid-1920's was fighting to emancipate his associates from their Republican "fixation." All Negro leaders take the realistic attitude that there can be no effective participation in Southern politics except through the Democratic party.

Within that party, there was considerable evidence in the 1946 primary of a preference for liberal candidates. This is hardly surprising, since liberalism on economic issues is frequently associated with a tolerant attitude on the racial question. The two liberal candidates who attracted Negro support were gubernatorial candidate Homer P. Rainey and Dis-

trict Judge Sarah Hughes, who ran unsuccessfully for Congress in the fifth district, consisting of Dallas county. Rainey, who ran for governor on a "little New Deal" platform, was universally credited with carrying practically all of the Negro vote, perhaps 85 per cent. Judge Hughes, whose liberal views were highlighted by her successful opponent's description of himself as "the fighting conservative," received her most solid support from the Negro wards. Dallas and Fort Worth Negro groups endorsed the slates of "liberal" candidates for state legislature in their respective counties. Finally, the Progressive Voters League, the state-wide organization that claims to speak for the greatest number of Negroes, is aptly named. It has a progressive, liberal, New Dealish slant.

An important yet illusive question concerns how intelligently Texas Negroes are using the suffrage. For this purpose, we may identify intelligent voting with race-conscious leadership, bent upon securing for the Negro his appropriate share of public expenditures and equal treatment before the law. The opposite extreme of unintelligent voting would be vote-buying and vote-selling by a group ignorant of issues and under the leadership of a Negro concerned with advancing his own fortunes rather than those of his race. A venal Negro vote was characteristic of Dallas municipal politics prior to 1937. Money was distributed strategically throughout the Negro wards prior to election, under the leadership of a Negro bondsman. When a new, race-conscious leadership emerged, Negroes were also approached with money, and had to explain to candidates' representatives that the colored vote was not for sale. When a similar financial approach was attempted in Austin, it too, was rebuffed. Several Negro leaders stressed the point that "we accepted no money from candidates and we spent our own funds to push the candidates we endorsed." Moreover, it is significant that few white observers were inclined to assert that the Negro vote is purchasable. On the contrary, there is considerable evidence of a Negro leadership that seeks its political reward in terms of advancement for the whole colored community. In the 1937 Dallas municipal election, the Negro group occupied a strategic balance-of-power position in relation to the several white factions; and it successfully bargained for and received as its reward improved schools, parks, public housing, and certain types of city employment. Indicative of the level of campaign appeal is some recent campaign literature of the same group which reads: "Negro Dallas needs adequate housing, expanded hospital facilities, added transportation, storm and sanitary sewers, law enforcement, and police protection." The whole procedure associated with the Progressive Voters League of examining a candidate's record suggests a fair degree of political sophistication. Finally, the overwhelming support in 1946 of gubernatorial candidate Rainey, the only candidate in Texas history who ever came out openly for improved Negro education, indicates a high degree of intelligent self-interest.

The chief exception to this type of behavior is Valmo Bellinger, the urbane, educated, astute Negro boss in San Antonio. Since Bellinger is interested in San Antonio's extensive gambling industry, he is active in politics in the first instance to protect his source of income. San Antonio is Texas' most machine-controlled city, but the machine's real strength rests in the Mexican-American population, which outnumbers the Negro population five to one. Bellinger has always worked with the machine. His method is to pay a number of politically active Negroes in each neighborhood to "talk up" the approved candidates during the weeks prior to the election and to get the Negro electorate out to the polls on election day. Debate on the advancement of the Negro race is deëmphasized. Although no one argues that Bellinger is in the political game with racial uplift as his prime incentive, this is not to say that the San Antonio colored group has gone unrewarded. The city has given the Negroes an impressive library and auditorium, and the sheriff's office has a reputation for avoiding brutality toward Negro suspects. Moreover, recent events have pushed Bellinger into the position of being a "race man" in spite of himself. The 1946 primary put him in a difficult position. From a gambler's standpoint, an acceptable gubernatorial candidate would be one not disposed to call out the state police to suppress gambling in San Antonio, where the local authorities have generally winked at it. Surely a prominent Baptist layman and former preacher like Dr. Homer Rainey was not the ideal candidate from this standpoint. Yet the mass of Bellinger's followers were disposed toward Rainey, whom the opposition referred to as "old nigger-loving doc." For a long time Bellinger was strangely silent for a man theretofore always voluble about politics. Eventually the point was reached where he had to get out in front and lead his followers where they wanted to be led, or lose his position of leadership in the Negro community. Finally, he pledged his support to Rainey, and, once he had done so, he worked hard and faithfully to bring in the large majority that the colored wards gave his candidate. A less dramatic instance of the same kind occurred in April, 1947, when Bellinger worked with the machine against former Congressman Maury Maverick's candidacy for mayor. In this case, Bellinger found it expedient to publicize widely what he alleged to be Maverick's anti-Negro record.

It might be worth while to compare the degree of Negro political sophistication with that of Texas' other minority, the Mexican-Americans. The majority of this Spanish-speaking group, both in San Antonio and in South Texas, simply do not "get the score" politically; they are herded to the polls and "voted." They have to date developed practically no group-conscious political leadership.[11] While the group is entirely capable

[11] The election of Gus C. Garcia to the San Antonio school board mentioned above may be the beginning of a new trend.

of producing effective leaders and will surely do so in future years, at present the Negro is much more politically advanced than the Mexican-American.

It may be argued that I am citing only instances where Negroes have displayed intelligent self-interest, and that probably numerous instances of political stupidity, or even venality, have escaped my attention. This type of argument is irrelevant because one cannot demand higher standards of political intelligence from Negroes than from the Texas white electorate. The record shows that prior to Negro enfranchisement the Texas white electorate twice elevated Pappy O'Daniel to the governorship and twice to the United States Senate. So far, no Negro voters have been swayed by the appeal of hillbilly music.

The most fundamental question is whether the Negro vote in Texas is here to stay and to increase. The best test of this is whether practical politicians defer in any way to the Negro and give, or offer to give, any rewards for his support. The test is whether politicians behave toward the Negro in the same way that they behave toward other organized groups of voters. Bits of evidence suggest that many politicians are adjusting their behavior to the new situation. A Negro leader in central Texas comments on his home county: "The attitude of county officials has greatly improved since the Supreme Court decision permitting Negroes to participate in the Democratic primary. They are decidedly more responsive to the wishes of Negro voters. . . . It is my opinion that the appointment of a Negro deputy constable in the county was a gesture to secure the support of Negro voters. We have the promise of the sheriff and county commissioners that a Negro deputy sheriff will be appointed in the near future."

I have earlier indicated several instances where tangible city benefits such as improved school buildings, a library, public housing, parks, and a few city jobs have been the rewards for participation in the larger cities. Improved treatment by law-enforcement officers seems to be associated with Negro voting. Campaigning for the Negro vote, either openly or quietly, is the most obvious proof. Rainey acquired the "nigger-lover" label, yet his successful opponent, Jester, carried political advertising in the Dallas Negro newspaper and distributed large amounts of campaign literature in the Negro district of San Antonio. Candidates for county office in Travis, Galveston, Jefferson, and Lamar counties solicited Negro support in 1946. Both opposing candidates for mayor of Paris made overtures toward the Negro. Other candidates have had their representatives negotiate in private with Negro leaders—in the delicate situation of needing the Negro vote, yet fearful lest the opposition make accusations of being overly friendly to the Negro. Finally, it might be noted that politicians now find time in their crowded schedules to make per-

sonal appearances at Negro gatherings. No less personages than Governor Jester and Congressman Lyndon Johnson have put in appearance at the Red Cross Roll Call and Baptist conventions. A Houston Negro leader asserts that he could phone any member of the city council and invite him to address a Negro group with the certainty of receiving an unhesitating acceptance.

Sometimes more casual comments of politicians reveal a changed attitude. Attorney-General Price Daniel is one of the state's most rapidly advancing politicians, a very likely strong gubernatorial candidate in 1950. His official duties entailed his fighting the effort of Negro Herman Sweatt to enter the University of Texas Law School. Although he had never earlier shown any indications of a particularly favorable disposition toward Negroes, he went out of his way to assure the reporter of a Negro newspaper; "You know, when I first got started on the law school case, I felt that there was no justification for Sweatt's action at all. Now, I have come to change my mind and I feel that the case is considerably more involved and has more angles than I had realized at first." A more direct illustration on the level of county politics involves the elective county tax assessor who was astonished at the number of Negroes who trooped into his office to pay their poll taxes in an off-year. He telephoned a Negro leader with whom he was acquainted and inquired. The reply was that the Negroes were being urged to pay their poll taxes, even in an off-year, in order to establish the habit of qualifying themselves to vote; whereupon the assessor, whom no one had ever accused of being a champion of Negro rights, replied: "Arthur, you tell your people that I'm their friend." A complete reversal of attitude is illustrated by the story concerning veteran Congressman Wright Patman. His immediate reaction to the white primary decision of 1944 was to state that Negroes would vote in his district "over my dead body." Two years later, when encountering appreciable opposition in the primary of 1946, he was to be seen putting in an occasional appearance at Negro fish fries and church picnics.

Negro voting has come to Texas to stay. No vigorous reaction against it has appeared; on the contrary, there is already a high degree of white acceptance. Any Negro leader questioned about the extent of 1946 participation in his town will assure you that whatever the turnout in that year, the participation will be yet greater in 1948 and that the efforts made to insure poll-tax payment will be more vigorous. Nor has the white population produced a great champion of white supremacy—a Texas Bilbo. A Negro leadership calling for continued increase in participation and a white population pretty generally accepting the idea, and certainly not united against it, can lead only to continued and increased Negro participation.

STATE LAW ON THE NOMINATION, ELECTION, AND INSTRUCTION OF PRESIDENTIAL ELECTORS

RUTH C. SILVA
Wheaton College (Massachusetts)

The Constitution of the United States provides that each state shall appoint, in such manner as its legislature may direct, a number of presidential electors equal to the number of Senators and Representatives to which the state is entitled in the Congress.[1] The Supreme Court has ruled that this clause gives the state legislature exclusive power to decide the manner of choosing electors.[2] Before 1832, several legislatures themselves selected the members of the state's electoral college, a practice followed by South Carolina until the Civil War. As every student of American government knows, in the period from 1788 to 1832, the popular selection of electors was established and real discretion on the part of electors in choosing a President and Vice President became a legal fiction. For a century, the practice has been for the electorate to choose a set of electors, who, it is understood, will legally confirm the decision already made at the polls.

The automatic operation of the electoral college as a device for translating popular votes into electoral votes is now challenged, however, with the projection of the possibility of eighty "unpledged electors." The governors of seven Southern states recently agreed that if the Democratic national convention nominates a presidential candidate advocating anti-segregation, anti-lynching, anti-poll tax, and fair employment practices legislation, they will attempt to keep the Democratic electoral votes of their states from being cast for such nominee.[3] This possibility makes state laws regulating the nomination, election, and instruction of presidential electors of utmost interest and importance.[4]

There is considerable variation among the states in methods now used to nominate candidates for the office of presidential elector. In twenty-seven states, electors are nominated by the state conventions of the respec-

[1] Art. II, Sec. 1.

[2] McPherson v. Blacker, 146 U. S. 1 (1892). See pp. 29–36 for a history of the different methods used for appointing electors from 1788 to 1892.

[3] *New York Times*, Mar. 14, 1948. The seven states and their electoral votes are as follows: Alabama, 11; Arkansas, 9; Georgia, 12; Maryland, 8; Mississippi, 9; South Carolina, 8; Texas, 23. The same possibility has been discussed in five other states, with fifty-five more electoral votes: Florida, 8; Louisiana, 10; North Carolina, 14; Tennessee, 12; Virginia, 11.

[4] The author wishes to express appreciation to Samuel H. Still and W. Brooke Graves, of the Library of Congress, for checking the information in this article against the records of the State Law Division of the Library of Congress.

tive parties;[5] the law in ten states gives this power to the various party organizations;[6] and in seven states electors must be nominated in primaries.[7] In Arkansas, Maryland, and North Carolina, they may be nominated by either the primary or the convention method;[8] and in Pennsylvania the law provides that the presidential nominee of each political party shall nominate as many persons to be the candidates of his party for presidential electors as the total number of electors to which the state is entitled.[9] In November, 1944, the Mississippi legislature nominated a slate of electors whose names were printed on a supplemental ballot, and the voter had his choice between the electors nominated by the parties and those nominated by the legislature.[10]

There is always the possibility that these nominating procedures will not operate without contest; such was the case in Texas in 1944, when the Democratic party of that state split into two factions, each of which nominated a slate of electors, one being "pledged" to Roosevelt and

[5] California, Colorado, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. The Nebraska law requires this to be done at a post-primary convention [*Laws* (1943), c. 77, § 4]. The attorney-general of Wisconsin has ruled that such electoral candidates may also be nominated by petition [25 O.A.G. 610].

[6] Alabama, Connecticut, Delaware, Georgia, Idaho, Kentucky, New York, South Carolina, Tennessee, and Virginia. In Alabama, the party may nominate electors through the primary, but there is no statutory provision for the primary [*Code* (1940), Title 17 §§ 65–66, 145]. In Idaho, the county and state central committees of the various parties are charged with the duty of providing for the nomination of presidential electors. Although the United States Supreme Court has ruled that electors are "state officers" [Fitzgerald v. Green, 134 U. S. 377, 379–380 (1890)], the supreme court of Idaho ruled that when the legislature provided for the nomination of state officers in the primaries, presidential electors were not included [State v. Gifford, 22 Idaho 613 (1912)]. Thus electors continue to be nominated by the party organizations. In New York, this task is performed by the state central committee of each party [*Election Laws* (McKinney, 1943), § 131]. South Carolina vests this power in each party, and it is for the party to decide whether it will be done in the primary or otherwise [*Code* (1942), § 2304].

[7] Arizona, Florida, Kansas, Nevada, New Mexico, Oklahoma, and Oregon. In some states where this duty is imposed upon the party, the nominations may actually be made in the primary. See note 5 *supra*.

[8] In Arkansas and North Carolina, there is no specific provision for the nomination of electors, but candidates for state offices are nominated by the state convention or primary of the respective political parties. In North Carolina, however, the supreme court has ruled that the primary provides the only method of nomination, and one who is not so nominated is not the nominee of any political party. McLean v. Durham County Board, 222 N. C. 6 (1942).

[9] *Stats.* (Purdon, 1936), Title 25, § 1221.

[10] *Laws* (1944), Ex. c. 2.

Truman and the other being "unpledged." Before the popular election, the state courts decided that the pledged nominees were the official nominees of the Democratic party; but both slates of electoral candidates appeared on the ballot in the November election, the unpledged electors running under the banner of "Texas Regulars Party."[11] Texas, like forty-five other states, had no special statutory provisions for settling contested nominations for the office of presidential elector, and the contest was decided under the general laws governing contested nominations. Only Illinois and Louisiana provide a special tribunal for this purpose. In Illinois, the governor, the secretary of state, the auditor, the state treasurer, and the attorney-general meet to decide which set of nominees to accept in case more than one certificate of nomination for electors of the same political party is filed with the secretary of state by contesting conventions.[12] In Louisiana, objections arising to nominations of electors are considered by a board consisting of the secretary of state, the auditor. and two voters appointed by the governor.[13]

In recent years, twenty-one states, by adopting the so-called "presidential short ballot," have recognized the obligation of the electors to vote in the electoral college for the presidential nominee of their party.[14] These states do not print the names of the candidates for elector on the general election ballot, but instead place the name of the party's nominee for President and for Vice President under the party appellation. A vote for the presidential candidate is considered a vote for the entire list of electors nominated by that party.[15] In twelve other states, the name of the presidential candidate appears on the ballot along with the names of his party's nominees for the electoral college. New York actually is the thirteenth state in this list, but the presidential short ballot is used where vot-

[11] *New York Times*, May 7, 17, 24, 25, 28, June 5, 8, 11, 13, 15, 22, 23, 24, July 16, Sept. 24, 26, and Nov. 7, 1944.

[12] *Rev. Stat.* (1943), c. 46, §21–1(d).

[13] *Laws* (1942), nos. 137, 138, § 26.

[14] See Spencer D. Albright, "The Presidential Short Ballot," in this REVIEW, Vol. 34, p. 955 (Oct., 1940). New Jersey has adopted the so-called short ballot since Albright's study was published. *Laws* (1944), c. 16.

[15] California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Washington, and Wisconsin. In Connecticut, the "short ballot" is permissive [*Gen. Stat.* (Supp., 1935), §165c]. The supreme court of Ohio upheld the presidential short ballot law of that state, saying that, since the United States Constitution vests the state legislature with authority to direct the manner in which presidential electors shall be appointed, and since the state constitution contains no limitation on the exercise of this power, the law providing for placing the names of the presidential and vice-presidential candidates on the ballot in lieu of the names of the electors is constitutional [State ex. rel. Hawke v. Myers, 4 N. E. 2d. 397 (1936)].

ing machines are authorized.[16] The laws of eight states require the names of the electors to be placed on the ballot and either say nothing about the name of the presidential nominee or allow his name to be added to those of the electors.[17] Only five states, by listing the nominees for electors while omitting the names of candidates for President and Vice President, adhere to the fiction of the people's choosing electors, who in turn freely elect the President and Vice President.[18] Contrary to newspaper reports, Virginia is not one of these states. The names of the presidential and vice-presidential candidates will appear on the general election ballot next November.[19] Finally, in South Carolina, where the Australian ballot is not in use, each party provides its own general ticket ballot for presidential electors. The name of the candidate and the office he seeks must be printed on the ballot, and it is left to the party to decide whether or not to put the names of the presidential and vice-presidential candidates on the ballot.[20]

All of the states employ the general ticket system, under which the electors are elected in the state at large.[21] The general ticket system and the practice of voting for the electoral candidates of one party as a group

[16] Kansas, Minnesota, Montana, Nevada, New York, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming. New York's right to omit the names of the electors on voting machines was upheld in Thomas v. Cohen, 262 N. Y., Supp. 320 (1933).

[17] Arkansas, Florida, Georgia, Idaho, Maine, Texas, Utah, and Vermont. In 1931, the legislature of Texas provided for the presidential short ballot [*Laws* (1931), c. 186], but the attorney-general, James V. Allred, ruled that " . . . this act [Chap. 186] is so vague, indefinite, and uncertain, that in our opinion it is incapable of either intelligent construction or application." See Albright, *op. cit.*, 957. In 1944, the Texas ballot listed the names of the electoral nominees without the names of the presidential and vice-presidential candidates; but this was not confusing to the voter since the "unpledged" Democratic electoral candidates ran under the appellation of "Texas Regulars party."

[18] Alabama, Arizona, Louisiana, Mississippi, and New Mexico.

[19] *Code Ann.* (Michie, 1942) §155, as amended by law which becomes effective June 29, 1948.

[20] Public officials conduct the election, but the parties prepare their own ballots. No legal action can be taken to compel a party organization to prepare ballots; and, in practice the Democratic party is usually the only one to print any ballots. See Gardner v. Blackwell, 167 S. C. 313 (1932).

[21] Before 1832, electors were often chosen under the district system by which one elector was chosen by the voters in each Congressional district and two by the voters in the state at large. This, of course, allowed representation in the electoral college for minority parties with strength localized in some districts. In 1891, the Democratic legislature of Michigan, which usually is Republican, adopted the district system to secure a part of the electoral votes; and in the election of 1892, the Democrats captured five of the fourteen electoral votes. The law was upheld in McPherson v. Blacker, *op. cit.*, but subsequently was repealed by a Republican legislature.

mean that a popular plurality in the state gives all of the electoral votes of the state to a single presidential candidate and his running-mate. The law of at least ten states makes it possible, however, for the electoral vote of the state to be divided between several presidential candidates, because these states allow the voter to split the ticket in selecting electors.[22] Obviously, such provisions are based on the fiction that the electoral college is governed by Burke's theory of representation instead of by the mandate theory. Voting for some electoral candidates of one party and some of another only serves to cancel any effective choice for President, since the voter is really casting his ballot for a presidential candidate and the mandate theory governs balloting in the electoral college. The split-ticket provision does nothing to correct the anomalies of the general-ticket system. A more significant provision in the state law would be a list system of proportional representation, by which the seats in the state's electoral college would be apportioned among the various parties in relation to their popular support at the polls.[23]

A great part of state law regulating the election of presidential electors is based on the assumption that they will cast their votes in the electoral college as "instructed";[24] but only two states make any attempt to pledge

[22] Kansas, Louisiana, Maine, Nevada, New York, Pennsylvania, Rhode Island, South Dakota, West Virginia, and Wisconsin. Presumably this could be done in some of the other thirty-eight states under the general "write-in" provisions.

[23] For example, under this system, in 1944 Dewey would have captured 226 electoral votes instead of 99 and Roosevelt would have won only 305 instead of 432. The several state legislatures would doubtless have power to enact such a plan under the ruling in McPherson v. Blacker, *op. cit.*, but such a reform on a national scale could be brought about only by a constitutional amendment. From time to time, a joint resolution seeking to accomplish this by constitutional amendment has been introduced in Congress, but never has attracted significant support. Such state laws would do nothing, of course, to correct the anomalies inherent in the electoral college system itself, since each state is entitled to as many electoral votes as it has senators and representatives in Congress. New York, with its 14 million population and 47 electoral votes, has 127 times the population of Nevada, but only 16 times the number of electoral votes.

[24] The last time an elector failed to follow his "instructions" was in 1820, when William Plumer of New Hampshire cast his electoral ballot for Adams and Rush instead of voting for Monroe and Tompkins. Plumer did this because he wished to groom Adams for the presidential race in 1824, and he thought Monroe lacked economy and foresight and Tompkins neglected his duties. Everett S. Brown, *The Missouri Compromise and Presidential Politics, 1820–1825* (St. Louis, 1926), 53, 60–62; C. O. Paullin, "The Electoral Vote for John Quincy Adams in 1820," *Amer. Hist. Rev.* Vol. 21, p. 318 (Jan., 1916).

In 1876, James Russell Lowell was urged to spare the country the Hayes-Tilden dispute by casting his electoral vote for Tilden; but he declined. On this subject, Lowell wrote to Leslie Stephen as follows: "In my own judgment I have no choice, and am bound in honor to vote for Hayes, as the people who chose me expected me to do. They did not choose me because they had confidence in my judgment, but

or instruct the electoral candidates to comply with the usage. California law directs the electors, when assembled, if both of the candidates are alive, to vote for the presidential and vice-presidential candidates of the political party which the electors represent.[25] Oregon law requires each candidate for presidential elector to file with the secretary of state a pledge that, if elected, he will vote for his party's nominees for President and Vice President in the electoral college.[26] Actually, the obligation of the elector to vote for the presidential candidate of his party is recognized incidently in the laws of Massachusetts,[27] New Jersey,[28] and New York.[29] Virginia law also recognizes this obligation, although the statute has recently been amended to permit a bolt from the Democratic party. The amendment provides that the electors shall vote for the nominees of the national convention unless the candidates for electors shall be instructed by the state convention at least sixty days before the general election in November that they are expected to vote for other persons.[30] If the Democratic party in Virginia is not satisfied with the nominees and platform of the Philadelphia convention, a state convention is to be called later in the summer for the purpose of instructing the candidates for the office of elector. No state has a law instructing the electors as to what course to

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because they thought they knew what that judgment would be. If I had told them that I should vote for Tilden, they would never have nominated me. It is a plain question of trust." Horace Elisha Scudder, *James Russell Lowell* (Boston, 1901), II, 216–217.

[25] *Codes of Cal.* (Deering, 1939), Election Code, §10555.

[26] *Comp. Laws Ann.* (1940), §81–503a. In 1939, the legislature repealed this provision; but the repeal law was rejected by referendum at the general election held Nov. 5, 1940.

[27] Massachusetts law provides: "In order to vote for presidential electors, the voter shall make a cross (X) in the square at the right of the party or political designation appearing on the ballot at the right of the surnames of the candidates for president and vice-president, *to vote for whom such candidates for electors are nominated* . . . " *Laws* (1932), c. 135, §2.

[28] The New Jersey law provides that the names of the candidates for President and Vice President "for whom such electors are to vote" may be included in the certificate of nomination of electors to be filed with the secretary of state by each party. *Rev. Stat.* (1937), §19: 13–15.

[29] A party's candidates for presidential elector are described in New York law as a specified number of candidates "nominated to support the party candidates, naming them, for the office of President and Vice President." [McKinney, *op. cit.*, §§83 (1), 84]. In 1932, however, an attorney-general's opinion stated that there is no provision requiring the presidential elector to vote for a particular candidate for President. [45 St. Dept. 144].

[30] Virginia law provides that each party shall file with the secretary of the commonwealth the names of its candidates for the office of elector and the names of the candidates "for whom they are expected to vote in the electoral college." Michie, *op. cit.*, §155, amended by §157(a) effective June 1, 1948.

follow if the presidential candidate whom they support dies between the time of the popular election and the meeting of the electoral colleges;[31] but there are state laws providing that the party organization file the name of the substitute presidential candidate with the Secretary of State. The assumption is, of course, that the electors will vote for the substitute candidate in the college; but there are no state laws instructing the electors to do so.

Study of state laws regulating the appointment of presidential electors reveals that certain reforms could be made by the states acting individually, and could be made within the framework of the existing electoral college system. The first is the adoption of a list system of proportional representation, making the electoral colleges a more nearly accurate reflection of the popular vote. The list system would also eliminate the possibility of the voter's rendering his ballot ineffective by voting a split ticket in selecting electors. The second is adoption of laws requiring the pledging of electors. Under the broad ruling of McPherson v. Blacker, it seems that the state law could make such a pledge one of the qualifications for becoming a candidate for the office of presidential elector.[32] No action, however, could probably be taken to compel the elector to abide by his pledge. The third is enactment of statutory provisions covering cases in which the presidential or vice-presidential candidate dies before the meeting of the electoral colleges. This legislation, at the state level, would supplement federal law providing for the presidential succession.[33]

THE TENURE OF CABINET OFFICERS

EVERETT S. BROWN
University of Michigan

Section 202(a) of Public Law 253 of the 80th Congress, 1st Session, approved July 26, 1947, provides that "there shall be a Secretary of Defense, who shall be appointed from civilian life by the President, by and

[31] In the popular election of 1872, 286 Grant electors and 65 Greeley electors were appointed. When the electoral colleges convened, Greeley was dead; but three electors actually voted for him. The other 62 Democratic electors cast their ballots as follows: B. Gratz Brown, 18; Thomas Hendricks, 42; Charles Jenkins, 2. Congress decided not to count the three votes for Greeley since he was dead when the electoral votes were cast. *Cong. Globe*, 42nd Cong., 3rd sess., 1296–1298, 1305.

[32] *Op. cit.*, 25–26, 35. The effect of such law would be to rule unpledged electors off the general election ballot.

[33] It is doubtful whether Congress has power to provide for cases in which a presidential candidate dies before the meeting of the electoral colleges. The Twentieth Amendment empowers Congress to provide for succession in cases involving the death of the President-elect or the Vice President-elect, but no candidate is the President-elect or Vice President-elect until after the meeting of the colleges.

with the advice and consent of the Senate." Section 311 of the same act amends the Presidential Succession Act, approved July 18,[1] by striking out "Secretary of War" and inserting in lieu thereof "Secretary of Defense," and striking out "Secretary of the Navy."

The effect of these changes is to elevate the Secretary of Defense to a position in the President's cabinet and to provide for his possible succession to the presidency. The law gives authority for his appointment, but says nothing about his term of office. This raises a question concerning which there is considerable confusion and lack of information. Specifically, what is the term of office of heads of the executive departments, i.e., those who compose the President's cabinet?

If one turns to the more recently established executive departments—those of Commerce[2] and Labor[3] —he reads that in each case the Secretary's "term and tenure of office shall be like that of the heads of the other executive departments." Further research discloses the interesting fact that only one of the other executive heads has a legal term. This is the Postmaster General. In his case, the law provides that "the term of the Postmaster General shall be for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed."[4]

The statement that there is no legal limit to the terms of other members of the cabinet is supported by an opinion from the Attorney General. On April 18, 1929, in reply to a letter sent at the request of President Hoover, Attorney General William D. Mitchell answered in detail two questions which had been submitted to him: (1) whether the head of any department of the government might legally hold office as such after the expiration of the term of the President by whom he was appointed, and (2) whether, in view of the provisions of the laws of the United States, Andrew W. Mellon might legally hold the office of Secretary of the Treasury.

Assuming that the words "the head of any department of the government" were intended to refer to the heads of the executive departments, which together were commonly called the cabinet, Mr. Mitchell asserted that he had "no doubt whatever that the head of each of these departments, with the exception of the Postmaster General, whose case is governed by a special statute, may continue to hold the office to which he has been appointed after the expiration of the term of the President by whom he was appointed and as long as the incumbent of the office of President wishes him to serve."

[1] *Public Law 199*—89th Cong., 1st Sess.
[2] 32 *Stat. at Large* 825; *U.S.C.* 5: 591.
[3] 37 *Stat. at Large* 736; *U.S.C.* 5: 611.
[4] 17 *Stat. at Large* 284; *U.S.C.* 5: 361.

The Attorney General added that while the President might, at pleasure, remove any executive officer, and while Congress might limit the term for which any executive officer might be appointed, there was no provision in the Constitution which limited the term to which the head of a department might be appointed, nor, except in the case of the Postmaster General, was there at the time of the Attorney General's opinion, any statute which fixed a limit.

Tracing the subject historically, Mr. Mitchell declared that the practical construction given to the commissions issued to heads of executive departments appeared to have been uniform since 1789, to the effect that a commission did not expire on the death of a President nor at the end of a President's term of office. It followed that no reappointment or new commission was necessary in the case of such officers as the new President wished to retain, except in the case of the Postmaster General. Secretary Mellon's commission, issued under a previous President, authorized him to hold office "during the pleasure of the President of the United States for the time being." Citing a number of previous instances where executive officers had been carried over under succeeding Presidents, the Attorney General concluded that, "with the exception of the Postmaster General, all heads of departments continue to hold office from the time they are commissioned until death, resignation, or removal ends their tenure."[5]

The question may well be asked why Congress, in establishing the departments of Commerce and Labor, stipulated that the tenure of the Secretary of Commerce and the Secretary of Labor "shall be like that of the heads of the other executive departments." One can only conclude that this was the result of carelessness on the part of those responsible for drafting the bills and failure on their part to note that the act of March 2, 1867, regulating the tenure of certain civil offices, and providing a term for the Secretaries of State, of the Treasury, of War, of the Navy, of the Interior, the Postmaster General, and the Attorney General, similar to that quoted above for the Attorney General,[6] had been repealed.[7] This carelessness in the wording of the statutes, combined with the general practice of heads of executive departments of submitting their resignations at the end of each presidential term, undoubtedly has done much to create and perpetuate the incorrect popular impression that the terms of the executive officers coincide legally with that of the President by whom they are appointed.

[5] *Opinions of Attorney General*, Vol. 38 (1929–1932), pp. 12–16. The remainder of the opinion relates to phases of Mr. Mellon's eligibility not pertinent to the question here discussed. See also *Cong. Record*, Vol. 71, pt. 1, pp. 9–14.

[6] 14 *Stat. at Large* 430.

[7] See *Index to Federal Statutes, 1874–1931*, p. 1221, Table of Repeals and Amendments.

The fact that all cabinet officers except the Postmaster General have no fixed legal terms takes on added significance with respect to succession to the presidency. Continuation in office of department heads for indefinite periods would care for a number of contingencies caused by failure to elect a President and a Vice President, or by failure of both elected President and Vice President to qualify.[8] In such cases, the Presidential Succession Act would apply, and unless the members of the cabinet had resigned or been removed, there would be no lack of persons available to fill the vacancy.

[8] For a more detailed treatment of this phase of the subject, see Joseph E. Kallenbach, "The New Presidential Succession Act," in this *Review*, Vol. 41 (Oct., 1947), pp. 931–941.

INTERNATIONAL AFFAIRS

THE POSTWAR WORLD MAP: NEW STATES AND BOUNDARY CHANGES

RUSSELL H. FIFIELD
University of Michigan

I

A comparison of the postwar worlds of 1919 and 1948 indicates that the process of nation-building has moved from Europe to Asia. In the peace settlement after the First World War, the new states of the world appeared for the most part in Europe, but in the aftermath of the Second World War the new members of the family of nations come almost entirely from Asia.

In Europe, three of the states that emerged from the First World War—Estonia, Latvia, and Lithuania—have lost their national existence and are now numbered among the sixteen republics of the Soviet Union. The only new state from a practical viewpoint to appear in the European firmament is Iceland, which dissolved the personal union of a common king with Denmark dating from November 30, 1918, and became a sovereign republic on June 17, 1944. An even exchange may be noted in the incorporation by Poland of the Free City of Danzig, once under the protection of the League of Nations and in the creation of the Free Territory of Trieste under the protection of the Security Council of the United Nations.

Although classification is difficult, the new states or near states of Asia fall roughly into a fourfold pattern: independence with partition, independence without partition, de facto or promised independence, and emergence from isolation into the family of nations.

In the category of independence with partition, two outstanding examples may be cited—India and Palestine. On August 15, 1947, Great Britain relinquished her Empire of India and the new dominions of Pakistan and India or Hindustan came into being.[1] All of the native Indian states were urged to adhere to either one of the dominions, and almost all of the princes had taken this step by the end of 1947 with the notable exception of Hyderabad. Both dominions will decide in 1948 whether to remain within the British Commonwealth of Nations like Canada or to secede like Burma.

In Palestine, the General Assembly of the United Nations followed the policy of independence with partition. On November 29, 1947, the General Assembly voted to divide the Holy Land into a Jewish state, an Arab

[1] Text, "Indian Independence Act, 1947," *Law Times Reports*, 177 (Aug. 23 and 30, 1947), pp. 52–59.

state, and the "corpus separatum" of Jerusalem under the Trusteeship Council of the United Nations.[2] The decision was applauded by the Zionists and condemned by the Arabs in Palestine, who were supported by the Arab League. In early 1948, the Jews took steps to create their state; but the Arabs refused to have anything to do with partition.

The withdrawal of British rule in India and Palestine has encouraged the process of "Balkanization" in Asia. Pakistan is divided into two sections in the subcontinent of India by Hindustan. Already the two dominions, rent by religious strife between Hindus and Moslems, are almost on the verge of open war over the status of Kashmir. In Palestine, the Jewish and Arab states under the present partition plan will each be divided into three segments just barely meeting. Fighting between the Arabs and Jews is making a mockery of the land sacred to Christian, Jew, and Moslem.

Under the impetus of the recent war, or as a consequence of it, seven new Asiatic states appeared on the map by the end of January, 1948. In June, 1941, Free French and British forces occupied Syria and Lebanon, and on the day of the beginning of the occupation, June 8, General Catroux proclaimed the independence of both countries.[3] The republics of Syria and Lebanon became charter members of the United Nations in 1945, and British and French troops left the countries the next year.

Three states in widely scattered parts of Asia entered the family of nations in 1946. On January 5, China recognized the independence of the Mongol People's Republic, which had voted for independence on October 20, 1945, by the extraordinary margin of 483,290 to 0. However, the influence of the Soviet Union is paramount in the republic.[4] On May 25, 1946, the Kingdom of Transjordan was proclaimed, although British influence in the new state is important.[5] In the western Pacific, the Republic of the Philippines came into being on July 4, 1946, but American influence in the new republic is far from negligible.[6]

In October, 1947, Ceylon reached the threshold of dominionhood in the

[2] The essence of the decision is found in the *United Nations Weekly Bulletin*, III (Dec. 9, 1947), pp. 760–761, and a map of the "Plan of Partition" on p. 776. Other significant material is located in the *United Nations Weekly Bulletin*, III (Dec. 2, 1947), pp. 741–754. The *Resolutions of the General Assembly of the United Nations*, Second Series, 1947, A/519, are in press (Feb., 1948).

[3] *Documents on American Foreign Relations* (Boston, World Peace Foundation, 1941), pp. 336–337.

[4] See especially "The Constitution of the Mongol People's Republic," *Soviet Press Translations*, Far Eastern Institute, University of Washington, III (Jan. 1, 1948), pp. 3–14.

[5] Text of Alliance with Great Britain, dated Mar. 22, 1946, *Treaty Series* No. 32 (1946), Cmd. 6916.

[6] Text of Proclamation of the President on the Independence of the Philippines, *Department of State Bulletin*, XV (July 14, 1946), p. 66.

British Commonwealth of Nations when a new constitution came into effect.[7] Northeast of Ceylon, the Republic of the Union of Burma was proclaimed on January 4, 1948, the first British colony to break formal ties with the British Empire since the secession of the thirteen American colonies in 1776. However, Burma's relations with Britain outside the Commonwealth are likely to be more intimate than Eire's relations with Britain inside the Commonwealth.[8]

Approaching independence through force, promise, or both, are Korea, Viet Nam, and Indonesia. After the collapse of Japan in the summer of 1945, Korea was split as a "military expedient" by the thirty-eighth parallel into Russian and American zones of occupation. As the Americans and Russians could not agree on a Korean government for all of the peninsula, the United Nations on November 5, 1947, approved an American resolution to send a commission to Korea to hold elections leading to the formation of a national Korean government.[9] The Russians boycotted the commission.

In French Indo-China, a civil war is in progress between the Annamese of Viet Nam and the French. In an agreement on March 6, 1946, the French promised the Viet Nam Republic freedom within an Indo-Chinese federation and the French Union.[10] However, fighting broke out over the interpretation of the terms of the agreement. A similar situation has prevailed in Indonesia, where the republicans located on Sumatra, Java, and Madura have been fighting the Dutch over the interpretation of the Cheribon agreement of November 15, 1946, providing for a republic of Indonesia inside a United States of Indonesia holding partnership with the Netherlands under a common Dutch ruler.[11] In January, 1948, representatives of the United Nations effected a truce between the Dutch and the Indonesians.

Finally in Asia, two old countries are emerging from isolation—Yemen and Nepal. Yemen, in southwest Arabia, joined the Arab League in 1945 and the United Nations in 1947. An American mission was sent to the capital city of San'a in April-May, 1946, and an agreement of friendship and commerce providing for diplomatic and consular relations was signed on May 4.[12] Nepal, which is located north of India and south of Tibet,

[7] Text, *Ceylon Government Gazette*, May 17, 1946; main features given in *Parliamentary Debates, Commons*, 1945–1946, 422 (April 30–May 17), pp. 282–283.

[8] See "Treaty with Annex and Exchange of Notes," dated Oct. 17, 1947, Cmd. 7240. This treaty was later ratified.

[9] Text, *United Nations Weekly Bulletin*, III (Nov. 11, 1947), p. 636. The *Resolutions of the General Assembly of the United Nations*, Second Series, 1947, A/519, are in press (Feb., 1948).

[10] *New York Times*, Mar. 8, 1946, p. 11.

[11] *New York Times*, Nov. 16, 1946, p. 8.

[12] Text, *Department of State Bulletin*, XV (July 21, 1946), pp. 94–95.

has shown greater interest in the outside world since the decision of the British to withdraw from India. The United States sent a mission to the capital of the country at Kathmandu in April, 1947, and an agreement of friendship and commerce providing for diplomatic and consular relations was signed on April 25.[13]

II

Although the number of independent states in Asia has risen, the boundary changes in Europe among old states have run true to type—extensive in scope and bitterly contested. The greatest boundary changes are in the shatter belt of peoples extending from Finland south to Greece. Here the Soviet Union has made the most extensive gains, while Germany has been pushed west of the Oder-Neisse line. In the transition zone of western Europe, running from the Lowlands to the Riviera on the Mediterranean, the changes have not been so extensive. The Franco-Italian frontier has been slightly altered in favor of France; the Saar has been economically integrated into France; and the small territorial claims of Luxembourg, Belgium, and the Netherlands have not yet been settled.

The new map of Europe indicates how uneasy must be the neighbor that borders the Soviet Union. None of Russia's European neighbors came through the recent war without either losing their national existence or some of their territory to the Kremlin.[14] All in all, the territorial gains of the Soviet Union in Europe amount to 178,100 square miles.

Finland, in her peace treaty with Russia on February 10, 1947, confirmed the loss of the Petsamo area with the warm-water seaport of Petsamo and the near-by nickel mines surrendered in the Russian-Finnish Armistice Agreement of September 19, 1944; the loss of the Salla sector, midway along the border between the Baltic and Arctic Seas, and the province of Karelia on the Gulf of Finland in the Treaty of Moscow on March 12, 1940; and the exchange in 1944 of the lease on Hanko for a fifty-year lease on the Porkkala-Udd area, controlling the approaches to Leningrad and the Gulf of Finland.[15]

The incorporation of the Baltic states in the Soviet Union on June 15–17, 1940, has never been recognized by the United States, but the republics are actually an integral part of the Soviet Union and the seaport

[13] Text, *Department of State Bulletin*, XVI (May 11, 1947), pp. 949–950. Also see Samuel H. Day, "Emergent Nepal—Its Economic Development and Trade Outlook," *Foreign Commerce Weekly*, Vol. 28 (July 26, 1947), pp. 3–5, 33–34. Mr. Day was a member of the American mission to Nepal.

[14] See *Trends in Russian Foreign Policy Since World War I*, Legislative Reference Service [printed for the use of the Committee on Foreign Relations of the United States Senate] (Washington, Government Printing Office, 1947), 68 pp.

[15] *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania, and Finland*, Department of State Publication 2743, European Series 21, 1947, *Finland*, pp. 2–3.

of Riga in Latvia is now at the disposal of the Red fleet.[16] Through the Potsdam Agreement of August 2, 1945, the Soviet Union has actually, though not formally, acquired the northern part of East Prussia, including the important naval base of Koenigsberg, renamed Kaliningrad, while Poland has received the southern part.[17] Prewar Poland east of the Curzon line is now incorporated in the Soviet Union as regularized by the Soviet-Polish Treaty of August 16, 1945, but Poland has been compensated on a de facto basis by the prewar German territory east of the Oder-Neisse line, including the valuable German industrial area of Upper Silesia but excluding the Soviet share of East Prussia.[18] Czechoslovakia has relinquished territory to the Kremlin in the loss of Ruthenia, or the Carpathian-Ukraine, in the Soviet-Czechoslovak Treaty of June 29, 1945. Roumania ceded Northern Bucovina and Bessarabia to Russia on June 28, 1940; the cession was confirmed in the Roumanian Armistice of September 12, 1944, and the Peace Treaty of February 10, 1947.[19]

Germany west of the Oder-Neisse line may be presumed to be the future territorial base of the Reich, despite the current dispute over the permanence of the Oder-Neisse line. The territorial claims of Czechoslovakia, the Netherlands, Belgium, and Luxembourg are not excessive, and the French economic integration of the Saar removes valuable coal deposits, but does not sever a large area from the Reich. Neither the Rhineland nor the Ruhr is likely to lose German sovereignty in the final peace settlement. The territorial losses of the Reich are largely in the east.

The area of twentieth-century Germany has decreased with each great military defeat. The Germany of the occupation zones of the "Big Four" is 142,000 square miles in area, in contrast to the 181,000 square miles of the Weimar Republic and the 212,000 square miles of the Reich of Kaiser William II. At the same time, the German population was about 65 millions in 1910, 1930, and 1945.

Italy was reduced in area through the Peace Treaty of February 10, 1947, from a metropolitan territory of 119,764 square miles to some 116,000 square miles.[20] Italy yielded to Yugoslavia about 3,000 square miles of Venezia Giulia, including the cities of Pola, Fiume, Rovigno, and Parenzo. Yugoslavia also gained the enclave of Zara, the Lagosta Islands

[16] See the *Diplomatic List*, Department of State, Jan., 1948, for a list of Baltic diplomats still accredited to the United States.

[17] Text of Potsdam Agreement, *Department of State Bulletin*, XIII (Aug. 5, 1945), pp. 153–160.

[18] *Ibid.*

[19] *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania, and Finland: Roumania*, p. 2.

[20] *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania, and Finland: Italy*, pp. 2–17.

near the central Adriatic coast of Yugoslavia, and the islands of Cherso and Lussino in the northern Adriatic. In the same treaty, Italy yielded an area of 300 square miles to the Free Territory of Trieste, which begins an uncertain existence under the Security Council of the United Nations. Albania's sole territorial gain amounted to the former Italian island of Saseno, which guards the entrance to the harbor of Valona across the Strait of Otranto. Along the Franco-Italian frontier, France acquired Briga-Tenda, Little St. Bernard Pass, Mont Cenis, and Mont Thabor-Chaberton (with the subsequent approval of the inhabitants in a plebiscite). Greece received the former Italian Dodecanese Islands in the Aegean, with the proviso that they would be and remain demilitarized. Italy also surrendered sovereignty over her colonial empire in Africa, consisting of Libya (Cyrenaica and Tripolitania), Eritrea, and Italian Somaliland.

Territorial changes in Central Europe and the Balkans were not so extensive as after the First World War. Postwar Austria today is likely to have the same prewar boundaries, although a rectification of the boundary between Czechoslovakia and Austria may occur. Yugoslav claims to the Klagenfurt basin of Carinthia have been strongly opposed by Austria, who is supported by the United States, Great Britain, and France. Austria's claims to the South Tyrol of Italy have not been granted, but an Italo-Austrian agreement has provided for equal rights for the German-speaking people of the South Tyrol. All Trianon Hungary lost in the Peace Treaty of February 10, 1947, was a small bridgehead near Bratislava to Czechoslovakia.[21] Although Czechoslovakia won this small area, she lost Ruthenia to Russia. Roumania kept Transylvania, eagerly sought by Hungary, but surrendered Bessarabia and Northern Bucovina to the Soviet Union and lost Southern Dobruja to Bulgaria in the Treaty of Craiova of September 7, 1940 (confirmed in the Roumanian and Bulgarian peace treaties of February 10, 1947). Thus the former Axis satellite of Bulgaria actually gained territory—Southern Dobruja—as a consequence of the war, but at the expense of her wartime ally, Roumania.[22] Bulgarian demands for an outlet to the Aegean Sea at the cost of Greek territory in western Thrace were denied. At the same time, Greek demands for a strip of land in southern Bulgaria for strategic reasons and for a slice of territory in southern Albania, called Northern Epirus, were not granted.

Boundary changes among old states in Asia were less extensive compared with the shifts in Europe. Whereas the Japanese Empire, prior to

[21] *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania, and Finland: Hungary*, pp. 2–3.

[22] *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania, and Finland: Bulgaria*, p. 2.

1931, had an area of 260,644 square miles, it now has only 147,492 square miles, the area of the home islands. Formosa or Taiwan and the Pescadores have been returned to China as promised in the Cairo Declaration of December 1, 1943.[23] The Japanese mandate of the Carolines, Marshalls, and Marianas has become a strategic trusteeship of the United States under the Security Council of the United Nations.[24] The area is now called the "Territory of the Pacific Islands." The Kuriles and southern Sakhalin have been acquired by the Soviet Union in accordance with the Yalta Agreement of February 11, 1945.[25] Korea has been lost to Japan and is in the process of gaining independence. The future of the Ryukyus with Okinawa, the Volcanoes with Iwo Jima, the Bonins, and Marcus is unsettled.

Russian territorial gains in Asia amount to 81,800 square miles. In addition to the Kuriles and southern Sakhalin, Russia annexed Tannu Tuva, an enclosed basin of the Yenisei Valley, in 1944. The Soviet Union has acquired in the Sino-Soviet Treaty of Friendship and Alliance and related agreements, signed on August 14, 1945, a thirty-year lease on the naval base of Port Arthur and the opening of Dairen for thirty years as a free port with a lease to the Soviets of piers and warehouses. Both Port Arthur and Dairen are located in the strategic Liaotung peninsula of Manchuria. Furthermore, the Soviet Union acquired in the agreement joint ownership with China for thirty years of the Chinese Eastern Railway and the South Manchurian Railway, now consolidated into the Chinese Changchun Railway.[26] Finally, the boundary dispute between Russia and Afghanistan over the Kushka district was resolved in 1946 in favor of the Soviet Union.

The territorial changes in the South Pacific have involved the old German possessions mandated to members of the British Empire after the First World War. The Territory of New Guinea was changed into a trusteeship on December 13, 1946, under the United Nations, with Australia remaining as the administering authority.[27] At the same time, New Zealand acquired a trusteeship over her former mandate of Western Samoa.[28] In 1947, the phosphate-rich island of Nauru was changed from a mandate

[23] Text of Cairo Declaration, *Department of State Bulletin*, IX (Dec. 4, 1943), p. 393.

[24] Text of trusteeship, *Department of State Bulletin*, XVI (May 4, 1947), pp. 791–792, 794.

[25] Text, *Department of State Bulletin*, XIV (Feb. 24, 1946), p. 282.

[26] Text, *Department of State Bulletin*, XIV (Feb. 10, 1946), pp. 201–208. A map of the "Port Arthur Naval Base Area in Accordance with Provisions of Sino-Soviet Treaty" is included.

[27] Text, *Treaty Series* No. 68 (1947), Cmd. 7200.

[28] Text, *Treaty Series* No. 65 (1947), Cmd. 7197.

to a trusteeship under the same administering authorities—Australia, New Zealand, and Great Britain (Australia in practice).[29] The interest of three members of the British Commonwealth in this island of eight square miles reflects the diplomacy of phosphates.

In Africa, the territorial changes were not so extensive after the Second World War as after the First. In 1919, the German colonies presented a problem, but the mandate system was created to meet the situation. In 1946, all of the African mandatory powers under the old League of Nations exchanged mandates for trusteeships under the new United Nations except the Union of South Africa for Southwest Africa. Tanganyika became a trusteeship of Great Britain; Ruanda Urundi of Belgium; French Togoland and French Cameroons of France; and British Togoland and British Cameroons of Great Britain.[30] A petition of the Ewe people of British and French Togoland and of the British Gold Coast for a united trusteeship under a single administering authority chosen by a plebiscite was not approved by the Trusteeship Council of the United Nations in December, 1947. The Class C mandate of Southwest Africa remained a legal problem, as the Union of South Africa wanted to annex the area and refused to submit a trusteeship proposal for it.

The future of the Italian colonies in Africa remains to be settled, although some kind of a trusteeship appears likely. A compromise of the foreign ministers of the "Big Four" in 1946 provided that if they could not reach a solution on the matter within one year after the ratification of the Italian treaty, the question of the disposition of the colonies should go to the General Assembly of the United Nations for final decision. Many countries are interested in the former Italian colonies: Britain now occupies them; Russia has sought a trusteeship over Tripolitania; the United States reopened an air-base in Mellaha near Tripoli in January, 1948; Eritrea is sought by both Egypt and Ethiopia; and the British have been giving consideration to a possible trusteeship for Italian and British Somaliland. Related to Egypt's interest in Eritrea is the Egyptian desire to force Britain out of the Anglo-Egyptian Sudan and to annex it.

No new states emerged from the Second World War in Africa, apart from the liberation of Ethiopia from Italian conquest in 1935–36. However, the rise of Arab nationalism in North Africa presages the possibility of new states along the Mediterranean littoral in the future. On August 31, 1945, the United States, Great Britain, Russia, and France signed a preliminary agreement for the return of Tangier to international status.[31]

[29] Text, *Treaty Series* No. 89 (1947), Cmd. 7290.

[30] Text for Tanganyika, *Treaty Series* No. 19 (1947), Cmd. 7081; for Ruanda Urundi, *Treaty Series* No. 64 (1947), Cmd. 7196; and for French Togoland, *Treaty Series* No. 67 (1947), Cmd. 7199.

[31] Text, *Department of State Bulletin*, XIII (Oct. 21, 1945), p. 613–618.

Franco of Spain had marched into the area in 1940, but international control was restored under the new agreement.

In the Western Hemisphere, no actual territorial changes of any consequence have occurred since the settlement of the Peru-Ecuador boundary dispute on January 29, 1942, at the Rio de Janeiro Conference of Foreign Ministers.[32] Guatemala has now renewed her claim to British Honduras, but has not accepted a British offer to refer the dispute to the International Court of Justice of the United Nations.[33] Argentina continues to claim the Falkland Islands, now under the flag of Great Britain. Newfoundland has not yet decided whether to join Canada, regain dominion status, or retain some form of commission government. The United States continues to operate the bases in the New World acquired on a ninety-nine-year lease from Great Britain in September, 1940—bases in Newfoundland, Bermuda, the Bahamas, Jamaica, St. Lucia, Antigua, Trinidad, and British Guiana. At the same time, British sovereignty over these Atlantic possessions remains intact.[34]

In summary, it may be noted that the greatest number of boundary changes as a consequence of the Second World War have occurred in Europe, while the rise of new states has been confined almost entirely to Asia. Africa has witnessed a few changes in territorial status, but the map of the Western Hemisphere remains practically the same as in early 1942. The Soviet Union has made the greatest territorial gains both in Europe and in Asia; the British Commonwealth-Empire has acquired no new possessions, but is losing territory through disintegration (according to the pessimists) or reorganization (according to the optimists); the United States has made no territorial gains through the war unless the new Territory of the Pacific Islands be considered a polite form of annexation. Both France and China have lost and gained land as a consequence of the recent global conflict. On the losing side, Japan has been stripped of her overseas empire and restricted to her homeland; Germany has lost substantial territory in the east; and Italy has relinquished sovereignty over small but important areas in Europe along with her empire. The record of the diplomacy of the postwar period does not indicate that the territorial status of the present is forever fixed.

[32] Text of settlement, *Documents on American Foreign Relations*, IV [1941–42], (Boston, World Peace Foundation, 1942), pp. 433–435.

[33] *British Honduras*, British Information Services, Reference Division, Oct., 1946, pp. 15–17.

[34] Text, *Department of State Bulletin*, IV (Mar. 29, 1941), pp. 387–412.

INSTRUCTION AND RESEARCH

POLITICAL SCIENCE 1 AND POLITICAL INDOCTRINATION

CLINTON L. ROSSITER
Cornell University

The departments of political science in America's colleges and universities are now numbered in the hundreds, their students in the tens of thousands. The variety of these departments is bewildering, differing as they do in size, curriculum, teaching methods, political complexion, aspirations, and even in name. It is no easy matter to discover what the fifty-man faculty in political science at Columbia and the one-man department of government at a California junior college have in common; yet one thing in common they certainly do have: the introductory course, and the complex problem which it presents.

That the introductory course does present a major problem to departments of political science everywhere was clearly acknowledged by the program committee of the 1947 meeting of the American Political Science Association, when it scheduled a panel entitled "The Beginning Course in Political Science." The problem was further acknowledged by the panel itself; hardly a person of the many who took part in its proceedings, whether seated at the round-table or holding forth extemporaneously from the audience, failed to show some degree of candid dissatisfaction with the introductory course as presently conducted at his institution. Rare indeed is the department of political science which is willing to let its introductory course ride along through 1948 in the exact shape it assumed through 1947. The urge for improvement is nation-wide, and several prominent departments have gone so far as to relieve instructors of part of their normal teaching burden and commission them to work out definite programs of radical revision.

The panel at Washington also demonstrated that, although the introductory course itself shows sizable variations from college to college, it has a common hard core in almost every institution: the facts and theories of American national government. The discussion centered naturally upon the problems of this universal aspect of the introductory course. It soon became apparent that, whatever ground this course may cover at any particular institution, or by whatever methods this ground is being got over, the areas in which these problems exist (and thus where improvement is possible) are pretty much the same everywhere: textual materials, types and methods of examination, procedures of instruction, relations with other departmental survey courses, and many others.

It is the purpose of this article to deal briefly with still another question facing those of us responsible for the introductory course—one which far too many of us have not wanted to face in the past, one which therefore remains perhaps the least carefully explored: the problem of political indoctrination. It by no means has a ready solution to this problem, even if there is one; it can hardly do more than call attention to its existence. But the time has come when each of the many thousands engaged in this common enterprise must ask himself: what am I doing, and what am I going to do, about political indoctrination in Political Science 1?

I

At the outset, we must concur in a definition of political indoctrination. Unfortunately, the events of the past fifteen years have put a repellent gloss upon that fine old Latin word *indoctrinate*, and most people today are no more disposed to use the word than they are prepared to define it. Just as Lincoln's sheep and wolf were "not agreed upon a definition of the word liberty," so many a career sergeant and drafted private were not agreed upon a definition of the word indoctrinate, while Joseph Goebbels offered still another version. Political scientists, however, can agree, and Webster as usual provides a surprisingly precise and simple definition: *indoctrinate* means *teach*, with emphasis on that sort of teaching which presents ideas, attitudes, and principles in addition to mere facts. The meaning of the phrase political indoctrination follows naturally. If military indoctrination teaches a man how to be a good soldier, political indoctrination teaches him how to be a good citizen.

This leads directly to the necessity for another definition, one for which Webster can supply no ready answer. Who is the good citizen? Who can define good citizenship, which, like electricity and equity, defies one-sentence definition? To answer these questions is not so hard as might at first seem apparent. We may have trouble defining electricity and equity, but we all know what they are. Likewise we have a pretty good idea what good citizenship is, and will confess to acquaintance with a number of good citizens in every group within our community. Perhaps at the conclusion of this article we shall be better prepared to list the essential qualities of good citizenship.

That the introductory course offers a unique opportunity for political indoctrination is obvious. The question is not at all "Can we teach good citizenship?"; rather it is "Could we avoid teaching it even if we tried?" Of all teachers of the modern disciplines, it is the political scientist who is least able to present the facts and theories of his own field without wrapping them up in a bundle of value judgments, however flimsy the wrapping may appear. The instructor does not live who can teach political science in a completely neutral fashion. Since we cannot avoid pre-

senting political judgments along with political facts, we must openly confess the peculiar nature of our worthy discipline and go on from that point to inquire into the substance and validity of those judgments.

The unavoidable opportunity for political indoctrination in the introductory course thus becomes an equally unavoidable responsibility. Since we are willy-nilly in a position to teach more than facts, we not only *can* teach good citizenship but we *should* teach it. To be sure, most of the objectives in the introductory course remain as always educational in nature and scope, centering as they do about the necessity that we present to the beginning student the basic details and theories of American national, as well as state, local, and comparative government. But since these details and theories defy presentation in neutral tones, their coloration should be generally bright and sympathetic, not dun and hostile—at least in the introductory course. There is, after all, a wide gulf between physical and political science; however factual an introductory course in the former may be, in the latter it will be factual and something more.

That "something more" can be encouraging, disillusioning, or impossibly colorless; and is there any doubt which it should be? Teaching can be stimulating, even inspirational, and in our case it ought to be. It is this writer's belief that a modest, but none the less provocative, program of political indoctrination is a paramount responsibility of the instructor in the introductory course; he has a clear duty to increase the political aptitude and sharpen the political senses of those embryonic political animals, his seventeen- and eighteen-year-old introductory students. It is plainly our business to encourage good citizenship. Certainly we will agree that the Republic can always use a few more good citizens, far more indeed than we in the colleges can give; and we remain as always the best qualified and situated to present the elements of good citizenship. For if we cannot teach them, who can? The high school? The parties? The American Legion? PCA? UMT?

Exactly how the instructor in the introductory course shall proceed upon this obviously delicate task of political indoctrination is a matter for each to decide according to his own political conscience and the circumstances under which he teaches. Methods may and will vary, and the pattern of success for one may be the pattern of failure for another. The task will never be an easy one, especially because it can hardly be openly proclaimed. The moment our students get the idea that they are being deliberately "politically indoctrinated" or lured into good citizenship, at that moment and not a second later the instructor may as well turn back to the painfully neutral recital of facts and theories. In simplest terms, the problem seems to be one of giving a reasonably inspirational cast to the usual curriculum, as well as to the usual methods of lecturing, leading discussion groups, and answering questions.

II

What this article aims to offer is a tentative check-list against which this "inspirational cast" can be measured—four broad objectives or methods of presentation designed to ease the introduction of sound political indoctrination into Political Science 1. This list is sketchy, flexible, and not at all exclusive. Some of the items are perhaps even questionable. The first of them, in particular, was attacked (and defended) at the December meeting. Here, then, are some broad objectives which we might be teaching and encouraging in the introductory course:

(1) *Respect for democracy*, and for all the foundation-stones which give it firm support. The instructor in political science, whether he teaches at a state-supported or endowed institution, is clearly a public servant. It has been two thousand years since Cicero asked what greater or better gift a man could offer the Republic than to instruct its youth, and he still has not been answered. Does it not seem plain that the instructor in political science, standing as he does in the front rank of those who "instruct its youth," has a duty to give his general support to the system of government and progressive social order under which the United States has existed for one hundred and sixty years? This does not mean that we must give our unqualified support, or any support at all, to the present administration or any one of its policies, or that we must refrain from suggesting that the Constitution might well be improved by five or ten seasonable amendments. It does mean that there are some basic public questions which, at least for the purpose of our introductory course, are no longer open questions, some doctrines concerning our system of government and society upon which for the present we can and do in fact agree. Examples of this sort of doctrine, no longer exactly controversial in this country, are: constitutional government, freedom of expression, separation of church and state, equality before the law, and freedom of elections.

This is not to imply that we have the duty, or even the right, to build a permanent road-block across any one of the countless avenues down which the curious student may wish to move in his search for the truth, even if his estimate of that truth turns out to be the belief that American democracy is all wrong! But that sort of inquiry we can reserve to our more advanced courses, in which the student has more than just a little dangerous knowledge and a more pronounced maturity of judgment. In short, we can well make a distinction between the introductory course and its upper-class offshoots, reserving to the latter that close and critical scrutiny of all institutions and principles which we will renounce at peril of losing our intellectual sovereignty. The fact that a good proportion of the students in introductory political science are taking their first and last course in this field must certainly be taken into account.

By no means do we have to go on the stump for the present system and

force an uncritical "200 per cent American" acceptance of the status quo. Just as the doses of value judgment which we cannot avoid ladling out are not to be all ill-tasting, so are they not to be all emulsified. There is no reason why we cannot tell the introductory student that, in our opinion, America would do well to adopt the cabinet system of government or limit the Supreme Court's power of judicial review; there is likewise no reason for us to call for the establishment of an American Church or the total abolition of Congress. In summary, the agreed essentials of American democracy should be constantly kept in the foreground of our thinking and teaching, and we should, without mounting the pulpit, indoctrinate our beginning students in their logical and historical validity. If there is any particular essential we might be emphasizing, even preaching, in 1948, it is the American doctrine of civil liberties, a doctrine which academicians should be especially interested in expounding and defending. "Without mounting the pulpit" means simply that a principle such as freedom of speech can stand on its own feet and does not have to be inserted into the Mosaic Table to have its essential validity for this country amply demonstrated.

(2) *The liberal point of view.* (Surely the number one *cliché* of American political philosophy, now that even Tin Pan Alley has a song by that name; but who can find a better label for one of democracy's first essentials?). Having discharged our academic obligations to the agreed principles of American democracy, we then can remind ourselves and our students that most public questions are open questions, that most of the great issues of the day are palpably controversial, and that any two fair-minded, intelligent men who would agree on the closed questions mentioned under the first point might easily differ on most contemporary problems. Smith and Jones may agree exactly on the separation of church and state, disagree completely on the merits of the Marshall Plan. For purposes of the introductory course, this means that, whereas such doctrines as the separation of church and state and free elections should be advanced and discussed as questions upon which good Americans will in general affirmatively agree, the Marshall Plan or the 1948 election should be advanced and discussed as questions upon which good Americans will disagree.

The introductory course does not provide the instructor a standing invitation to pussyfoot. He does not have to simulate a false neutrality on the 1948 election or any other major political issue of the day; on the contrary, he must be strong and take his stand. But he should be careful to take it with a minimum of emotion and a maximum of reason, to take it on that solid ground which is here (and everywhere) labeled the liberal point of view. If the teaching methods of any particular introductory course should lead to a classroom discussion of universal military training

or government control of inflation—and if they don't, they ought to be revitalized—both sides of the question should be presented, dissent from the instructor's stand encouraged, and all in the course inspired to approach the question with the spirit of open-mindedness and compromise which is the only lasting basis for that social unity that has kept this democracy a going concern. Certainly the instructor has no business being so closely tied to any one group in the national or local community that other groups, whether business, labor, agricultural, or what not, are habitually portrayed in unfavorable tones. There could be no more effective way of summing up these first two points than to quote the admirable rule of action of the Congregational Church: "In essentials unity, in nonessentials liberty, in all things charity."

(3) *The historical approach to political science.* A famous aphorism tells us: "Without history, government has no root; without government, history has no fruit." Political scientists should never forget that, although exponents of an undoubted separate discipline, they are not far removed in time or in logic from their colleagues in the history department. We all remain, in an important sense, historians. There is no approach to any field of study, especially government and politics, more effectively designed to weed out prejudice and narrow-mindedness and to foster the liberal point of view than the historical approach. There is surely no more handy way to open up the beginning student's mind than to expose it to a couple of lectures on the historical development of the American political and constitutional system. We would all do well to remind our students that even in 1787 there was another perfectly sound stand on the big question of the time besides that which proved victorious; and if they can be made to understand that our debt to both Jefferson and Hamilton is colossal, perhaps they will then look upon, say Taft and Wallace, with eyes from which the scales of partisan blindness have been peeled away. The chief benefit of this particular approach to the teaching of political science is the ridicule which history heaps upon those termites of American democracy, the political absolutists—the doctrinaire radicals, the Spencerian individualists, the false prophets of doom on both the right and left flanks, indeed all those who will not walk up to any issue with an open mind or a willingness to have respect for the other man's point of view. History teaches us detachment, and detachment is a quality we all might seek and cherish.

(4) *Political participation.* The final point is the most important, and the one upon which we can most generally agree. Surely the instructor can add inspiration to education by encouraging his beginning students to take an active interest as well as an active part in the civic and political life of community, state, and nation. If American democracy was worth fighting for in time of war, it is worth serving in time of peace.

Once again cast in the rôle of public servants, we have the undoubted duty to stimulate active devotion to the public weal and to impress the beginning student with the necessity of political participation. The countless opportunities for active citizenship should be repeatedly and sympathetically presented, and our students should be reminded that they by no means have to wait for graduation to become participants. Picture to them in a favorable light the significant and indispensable rôle of the political party at every level of American democracy, and encourage them to join and work, whether the object of their political leanings be the Republicans, the Democrats, the hypothetical third party, or such groups as PCA and ADA. And cursed be the instructor in the introductory course who first lets drop a cynical remark on the complete futility of one man's vote!

The League of Women Voters provides an excellent case in point. A classroom discussion on civic participation or the Nineteenth Amendment will perhaps lead to a presentation of the aims and organization of that particular group, and the instructor would be cast in his educational rôle. But he would find himself unable to present these facts in a rigidly neutral fashion; a value judgment that he regarded the League as a worthy or unworthy, admirable or futile, enterprise would be bound to creep in. Since ninety-nine per cent of us will agree that the League is a worthy organization, should we not make a point of saying so, and should we not encourage the young ladies in our class to think about joining? Thus we are cast in the inspirational rôle, as well we should be.

III

Now, perhaps, we can define good citizenship with more precision and agree upon the basic qualities which the good citizen should possess. Among those qualities are: a working knowledge of the facts of American government, an understanding of the political and constitutional theory which underlies it, a good sense of American history, a fundamental respect for American democracy, open-mindedness and a disposition to compromise, an occasional urge to look with some detachment upon the day's controversial questions and controversial men, and a sense of public duty that leads to the polls, party headquarters, and the platform of the local high school auditorium. This good citizen, this man of a little less emotion and a little more reason, we can and should help to create. If we can arm him with some of his weapons, we can teach him how and why and when to use them. What is equally important, in helping him we help ourselves, we make our introductory course a vastly more attractive proposition. For the more successfully we inspire, the more easily we can educate; and the more successfully we educate, the more easily we can inspire. Education and inspiration form a happy circle, not a vicious one.

The instructor who thinks of himself, in all humility, as a public servant is bound to be a better teacher.

So that worldly sophisticate, the Preacher, is wrong once again. In *Ecclesiastes*, I, 18, he tells us: "In much wisdom is much grief; and he that increaseth knowledge increaseth sorrow." We must dispute the Preacher, alluring as his aphoristic half-truth may be—or why do we draw our pay-checks? This we should agree to: He that increases knowledge, at least political knowledge, increases the number of good citizens, and he that increases the number of good citizens increases the chances that American democracy will survive.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

As announced in the preceding issue of the REVIEW, the forty-fourth annual meeting of the American Political Science Association will be held next December 28–30 in Chicago, with headquarters at the Palmer House. Arrangements have been completed also for holding the forty-fifth annual meeting in New York City, December 28–30, 1949, with headquarters at the Hotel Roosevelt.

The Committee on Awards of the American Political Science Association invites competition for three awards (in the form of scrolls) to be conferred on the authors of outstanding works in the field of political science. The awards are presented at the annual (December) meeting of the Association, by the following donors: the Woodrow Wilson Foundation, for the best publication on *government and democracy;* the Wendell Willkie Memorial Building, for the best publication in the field of *international relations;* the Franklin D. Roosevelt Memorial Foundation, for the best publication in the field of *government and human welfare.* Eligible for consideration for these awards are any publications (in the form of books, articles, or monographs) written by citizens or residents of the United States. The publications may be submitted by the author or the publisher. To be considered for this year's awards, a work must have been published between October 1, 1947, and September 30, 1948, inclusive; and six copies of the publication must be in the hands of the committee not later than October 1, 1948. The copies should be sent to the appropriate panel chairman, as follows: for the Wilson award, to Professor Carl B. Swisher, Johns Hopkins University; for the Willkie award, to Dean Payson S. Wild, Jr., Harvard University; for the Roosevelt award, to Professor Charles C. Rohlfing, University of Pennsylvania. Any member of the American Political Science Association (as well as the author or publisher) may propose a publication for any of the awards. Further information may be obtained from the chairman of the Committee on Awards (Professor Francis W. Coker, Yale University) or from the respective panel chairmen.

Professor Pendleton Herring, formerly of Harvard University, and more recently an officer of the Carnegie Corporation of New York, has been appointed president of the Social Science Research Council in succession to Dr. Donald Young, recently named director of the Russell Sage Foundation.

Professor Charles M. Hardin, of the University of Chicago, has accepted a three-month appointment with the Tennessee Valley Authority to make a special study of its program in the field of agriculture.

Dr. James K. Pollock has been named James Orin Murfin Professor of Political Science at the University of Michigan. The first holder of this chair was the late Joseph Ralston Hayden.

Professor Harold Zink, of DePauw University, has accepted a professorship at Ohio State University, where he will be in charge of the work in comparative government. He will make a six-weeks visit to England during the coming summer.

Professor Schuyler Wallace, of Columbia University, is at Stanford University during the summer quarter as visiting professor.

Professor Herbert von Beckerath will be on sabbatical leave from Duke University during the year 1948–49, and has accepted invitations to lecture at the Institut des Hautes Études Internationales and the Universities of Bonn, Munich, and Hamburg.

During the past spring, Professor Charles E. Merriam continued his series of lectures at the University of Chicago under the auspices of the Walgreen Foundation, dealing with problems of political leadership.

On April 12, Professor Robert R. Wilson, of Duke University, returned from Turkey, where he had delivered five lectures on public international law at the University of Istanbul and two lectures on the same subject at the University of Ankara. The trip was made at the invitation of these universities and upon nomination of the Division of International Exchange of Persons, Department of State.

Professors Herman Finer, of the University of Chicago, and Vincent M. Barnett, Jr., of Williams College, have joined the staff of the department of political science at the University of California at Los Angeles for the current first summer session. Professor Finer is offering work in comparative government and political theory and Professor Barnett in public law.

Professor Charles Grove Haines, a former president of the American Political Science Association, will retire as professor of political science at the University of California at Los Angeles on July 1, 1948. He will, however, offer a course in constitutional law and a seminar in public law during the second summer session (August 1-September 11). Following his retirement, Professor Haines will reside at Laguna Beach, California, and continue research and publication on the rôle of the Supreme Court in American political life.

At the middle of March, Dr. William P. Maddox, director of the Foreign Service Training Institute, visited Duke University and spoke to a group of students under the auspices of the department of political science.

Professor Leslie Lipson, of Swarthmore College, and Professor William P. Tucker and Mrs. Dorothy Jacobson, of Macalester College, are teaching in the University of Minnesota summer session.

During the spring, Professor Lennox A. Mills, of the University of Minnesota, delivered a lecture before the Institute of International Affairs at the University of Omaha on the topic, "American Foreign Policy in Eastern Asia."

Professor H. H. Wilson, of Princeton University, will spend the coming summer in England studying the British labor movement.

Dr. William C. Ide, teaching fellow and tutor at Harvard University during the past year, has been appointed assistant professor of comparative government at Claremont Men's College.

Professors Russell H. Fitzgibbon and H. Arthur Steiner, of the University of California at Los Angeles, took part in the program of the spring meeting of the Institute of World Affairs at Riverside, California.

Professor Avery Leiserson, of the University of Chicago, has accepted a summer appointment with the Commission on the Organization of the Executive Branch of the Government, and will work with the staff of the Brookings Institution.

Professor A. P. d'Entreves, Serena Professor of Italian Studies, and Fellow of Magdalen College, Oxford, England, gave a series of lectures at the University of Chicago during the spring quarter on "Natural Law; A Study of the European Tradition in Ethics."

Dr. Max M. Kampelman, of the University of Minnesota, will be on the staff as a lecturer at the University of Wisconsin's School for Workers this summer. He has been lecturing and acting as a consultant for a number of trade unions in Minnesota and Wisconsin.

Dr. Werner Levi, of the University of Minnesota, will accompany a group of students to Germany this summer under the program initiated at Minnesota entitled, "Society for the Promotion of Amity Among Nations." He will also give lectures to German students at the University of Marburg.

Professors Francis W. Coker, of Yale University, and Kenneth C. Wheare, Gladstone Professor of Government and Public Administration at Oxford University, will teach in the coming summer session of the University of Michigan. Professor Coker will conduct courses on recent political thought and Professor Wheare on British government and politics.

In May, Dr. Donald C. Stone, formerly assistant director of the U. S. Bureau of the Budget, was appointed director of administration for the Economic Coöperation Administration.

Dr. Royden J. Dangerfield, professor of political science and executive vice-president at the University of Oklahoma, has accepted a professorship at the University of Wisconsin and will assume his new duties at the middle of the coming academic year. Dr. Leon Epstein, of the University of Oregon, has been appointed assistant professor at Wisconsin and will begin work in September. Professor Dangerfield will conduct courses in international relations and Professor Epstein in political theory and comparative government.

Professor Leslie Lipson, of Swarthmore College, has been invited by the Canadian Political Science Association to speak at the forthcoming convention in Vancouver. He also has received a research grant to undertake a study of Canadian government as part of a program of research in comparative democracy.

Professor Gordon Skilling, of Dartmouth College, has been awarded a grant-in-aid by the Social Science Research Council for the completion of a study of the Czech-German national conflict begun during residence in Central Europe during 1937–39. He will spend the summer of 1948 in Prague.

Dr. Marshall M. Knappen has been appointed professor of political science at the University of Michigan. He will devote three-fourths of his time to adult education activities of the Extension Service in the field of government and allied subjects.

Professor C. Herman Pritchett, of the University of Chicago, accepted an appointment for the spring and summer quarters with the Commission on the Organization of the Executive Branch of the Government, and is studying the federal regulatory agencies.

Professor Frank W. Prescott, of the University of Chattanooga, will teach at Duke University during the first term of the coming summer session.

Professor James K. Pollock, of the University of Michigan, left for Germany at the middle of May to serve for two months or more as adviser to General Clay.

Professor D. Mackenzie Brown, of Santa Barbara College, California, is taking sabbatical leave at the close of the current semester and will proceed to India and China for research, principally on Indian legal development.

President Henry R. Spencer announces that, in continuation of last year's Association panel on Citizens' Political Participation, a committee of the same name has been set up, under the chairmanship of Professor Ben A. Arneson, of Ohio Wesleyan University. The full membership will be announced in a future issue of the REVIEW.

Biographical sketches have been completed for the second edition of the *Directory* of the American Political Science Association. Publication, somewhat delayed because of printing difficulties general throughout the country, is scheduled for the coming winter.

At Connecticut College, Mrs. Mary Trackett Reynolds has been advanced from a lecturership to an assistant professorship.

By error, the author of an article on social security in Canada, published in the *Canadian Journal of Economics and Political Science*, was indicated in the August, 1947, REVIEW (p. 834) as John L. McDougall. The name should have been Raphael Tuck. During the past year, Dr. Tuck was appointed to an associate professorship at Newcomb College, Tulane University.

Dr. Felix Nigro, who recently received his degree at the University of Wisconsin, has accepted an assistant professorship at the University of Texas.

Mr. Edward W. Mill, formerly assistant chief of the Division of Philippine Affairs in the Department of State, has been assigned to the American Embassy in Manila as Second Secretary of Embassy.

Professor Clarence Senior has resigned as director of the Social Science Research Center, University of Puerto Rico, to become associate director of the Puerto Rican Migration Study at the Bureau of Applied Social Research, Columbia University. Mr. Simon Rottenberg has been appointed acting director of the Center.

Professor Joseph Dunner, of Grinnell College, will teach at the University of Nanking during the months of July and August. Before leaving for China, Professor Dunner will open the National Conference for the Prevention of World War III at Grinnell College—a conference sponsored by the Citizens Committee for United Nations Reform, the General Federation of Women's Clubs, and a number of civic and religious organizations.

The department of political science at Cleveland College, Western Reserve University, has added to its staff Mr. Jack G. Day, formerly vice-chairman of the Wage Stabilization Board, Dr. Robert H. Rawson, formerly with the Bureau of the Budget, and Dr. Max Mark, a pupil of

Professor Hans Kelsen at the University of Vienna. Mr. Day, as associate professor, will be responsible for the fields of constitutional and administrative law; Dr. Rawson, with similar rank, will specialize in administration; and Dr. Mark, who has just come to the United States after seven years in the Far East, will serve as lecturer in international relations and comparative government.

Professor Roger Pinto, of the Faculty of Law, University of Lille, France, is available for lecture courses (of as much as three or four months' duration, and in English) in American colleges and universities. He is at present engaged upon a study of French and American administrative law. Institutions interested are requested to make the fact known to the Carnegie Foundation in Paris.

Dr. Majid Khadduri, of the American University of Beirut, and during the academic year 1947–48 a visiting member of the faculty at Indiana University, has accepted appointment as visiting assistant professor of political science at the University of Chicago, and will give special courses on the Near East.

Professor R. H. Tawney, of the University of London, gave two series of lectures at the University of Chicago during the spring quarter, one dealing with the revolutions of the seventeenth century and the other with British social democracy.

Professors Robert Horn and Walter Johnson, of the University of Chicago, are members of the faculty of the summer school at Salzburg.

Professor Roland Young, of Carleton College, is teaching at the University of Chicago during the summer quarter, giving courses on the legislative process and international relations. Starting this fall, he will hold a professorship at Northwestern University.

Dr. Harold A. Van Dorn, formerly of Rutgers University, and more recently with the Civil Aëronautics Board, served as lecturer in political science at the University of California during the recent semester.

Dr. Leon H. Ellis, lecturer in political science at Duke University, has accepted a summer position at the University of Idaho, where he will conduct a course in international law and a seminar in international politics.

Dr. Morgan Thomas has been appointed to an assistant professorship at the University of Michigan.

Messrs. David A. Farrelly and Harold Chase, graduate students in the department of politics at Princeton University, have accepted teaching positions at U.C.L.A. and the University of Delaware, respectively.

Dr. Channing Liem has resigned his instructorship at Princeton University to accept an appointment with United States Military Government in Korea.

Dr. Gilbert R. Barnhart has resigned his instructorship at the University of California at Los Angeles to accept a position with the Department of Agriculture in Washington.

Professor Hugh A. Bone, of Queens College, has accepted a professorship at the University of Washington, where he will take over the work in political parties, legislation, and public opinion and propaganda.

During the spring quarter at Stanford University, Professor Dwight Waldo, of the University of California, offered a course on administrative theory, and Mr. Donald A. Rutledge, of the Arabian-American Oil Company, conducted a seminar on personnel management. During the winter quarter, Mr. Joseph Rupley, federal field representative of the U.S. Bureau of the Budget, conducted a seminar on federal field operations.

Professor Joseph S. Roucek, of Hofstra College, spoke at the annual meeting of the American Academy of Political and Social Science on April 3 on "One World Versus an Iron Curtain World." This summer, he will be visiting professor of political science, international relations, and education at the University of Southern California, giving also a course at Occidental College entitled "Beyond the Iron Curtain."

On leave from Stanford University during the spring quarter for work in Washington were Professors Graham H. Stuart, completing his history of the Department of State, and Robert H. Connery, completing a research project for the Department of the Navy.

Professor Philip W. Buck, of Stanford University, went to England in June for a year of research. At the beginning of the current academic year, he was succeeded as chairman of the International Relations Program at Stanford by Professor James T. Watkins, IV.

During the past two years, Dr. Francis O. Wilcox, chief of staff of the Senate Foreign Relations Committee and member of the Legislative Reference Service, has been conducting a seminar on International Organization at the School of Advanced International Studies in Washington, and also has lectured at various universities on the rôle of Congress in the conduct of American foreign relations.

Professor Harold H. Sprout, of Princeton University, addressed the American Philosophical Society at its meeting of April 23 on "The Impact of Changing Conditions on Civilian-Military Relations in the United States."

Professor George A. Graham, of Princeton University, has been appointed a member of the official committee on Indian affairs set up by the Commission on the Organization of the Executive Branch of the Government. His special assignment will be to work with John R. Nichols, president of the New Mexico College of Agriculture and Mechanic Arts, Charles J. Rhoads, commissioner of Indian Affairs, and Gilbert Darlington, on a review and appraisal of the Indian policy of the American government.

At Roosevelt College of Chicago, Mr. George H. Watson, chairman of the political science department, has been promoted to the rank of professor, and Messrs. Robert Reno and Benedict Mayers have been made associate professors. Other members of the present political science staff are: Ludwig Freund, Dale Pontius, Frank Untermeyer, Arnold Kuhn, Seymour Mann, Louis Rosenthal, Esther Seeman, and Robert Siebenschuh.

In conjunction with the Chicago Division of the American Civil Liberties Union, Roosevelt College of Chicago has arranged a series of six public lectures on "The Status of Civil Liberties." Professor Charles E. Merriam, of the University of Chicago, spoke on March 9 on "Civil Liberties in the Modern State," and Professor Robert E. Cushman, of Cornell University, on April 13 on "Subversive Activity and Government Investigation."

The seventh annual Intercollegiate Leadership Conference held at Russell Sage College, Troy, New York, April 23–24, was featured by a mock party convention, with students of Russell Sage and other colleges participating.

The Social Science Division of the University of Chicago has authorized a Committee on Communications to develop a program of research and instruction in this area. The chairman is Dean Bernard Berelson of the Graduate Library School, and Professor Avery Leiserson represents the political science department.

During the spring quarter at the University of Chicago, the Walgreen Foundation offered a series of five lectures on problems of state government, each given by a governor of one of the states.

The Michigan state department of public administration and the college's department of history and political science are joint sponsors of Michigan State College's third Summer Workshop in State and Local Government in Michigan, to be held July 6–23. As in the past, the course is designed primarily for teachers and prospective teachers of civics and social studies in the elementary and secondary schools of Michigan. The

instructional staff includes some seventy state, county, and city officials, teachers of government in Michigan colleges and universities, secondary school teachers, and lay persons who have an interest in education and government.

In coöperation with the American Institute of Pacific Relations, the University of Wisconsin will hold a Far Eastern Institute at Madison, July 5–16. Lecturers and discussion leaders will include Mr. T. A. Bisson, writer on Far Eastern affairs; Professor John K. Fairbank, of Harvard University, Dr. Andrew J. Grajdanzev, traveller and author; Professor Karl J. Pelzer, of Yale University; Professor Amry Vandenbosch, of the University of Kentucky; and Professors Glenn T. Trewartha and Eugene P. Boardman, of the University of Wisconsin.

The Committee on Education and Research in Planning at the University of Chicago, Professor Rexford G. Tugwell, chairman, has been authorized to grant graduate degrees in planning.

With the collaboration of the Carnegie Endowment for International Peace, Mount Holyoke College is conducting an Institute on the United Nations, starting June 20 and ending July 17. The four weeks are devoted, respectively, to "The United States and the Soviet Union in the United Nations," "Political Transformations in the East," "The European Economic Crisis and World Recovery," and "Security in an Atomic Age."

An all-day Conference on Problems of American Foreign Policy in the Far East was held at the University of Pennsylvania on April 30, under joint sponsorship of the Foreign Policy Association and the University of Pennsylvania. Among Conference leaders were Messrs. Owen Lattimore, Paul Linebarger, T. A. Bisson, Edwin O. Reischauer, Shannon McCune, Lawrence K. Rosinger, and Miss Virginia Thompson. Participants from the University of Pennsylvania included Drs. E. B. Cale, Robert Strausz-Hupé, and Norman Palmer.

Special lectures at the University of Pennsylvania in April under auspices of the department of political science included "The Search for Security," by Dr. E. H. Carr, Institute of Advanced Studies, Princeton, N. J.; "Nationalism and Peace-Making," by Professor Hans Kohn, Smith College; and "Problems of the Forty-Billion-Dollar National Budget," by James E. Webb, director of the U. S. Bureau of the Budget.

Two panel discussions, planned by Professor Earl L. Shoup, of Western Reserve University, and participated in by some fifteen teachers of political science in colleges and universities of northern Ohio, took place at Western Reserve University in March. One discussion was devoted to personalities, and the other to issues, of the 1948 presidential campaign.

The University of Florida has announced the establishment of a Public Administration Clearing House, aimed at making available research and consultant facilities in the field of public administration. Dr. Arthur J. Waterman, Jr., is director of research.

On April 9 and 10, the Social Science Section of the Ohio College Association met at the Seneca Hotel in Columbus, Ohio. The morning session was given over to a committee report on "Ohio Constitutional Revision," under the chairmanship of Professor Harvey Walker, of Ohio State University. New officers are J. M. Peterson, Miami University, president; David King, University of Akron, vice-president; Miss Mona Fletcher, Kent State University, secretary-treasurer.

The Department of State announced in March that the Board of Examiners for the Foreign Service had decided to hold, on September 27–30, a written examination for appointment as Foreign Service officer. The examination will be held at all American diplomatic posts and consulates and at eighteen civil service examination centers in the United States. Applications for authorization to take the examination must be received by the Board of Examiners on or before July 1.

From July 19 through August 13, the University of Michigan Summer Session will offer a special four weeks session in survey research methods. The program will include introductory and advanced courses in survey research and sampling methods as well as a course in methods of statistical analysis. The survey research courses will cover study design, questionnaire construction, interview technique, coding methods, and related material. An introductory course in survey methods will precede the more advanced courses, running from June 21 to July 19. Inquiries may be addressed to Survey Research Center, University of Michigan, Ann Arbor.

Under the direction of Professor Bernard Hyink, the University of Redlands has inaugurated a program of public service internships, and selected senior students interested in government service are now being afforded opportunity for direct experience with government. Seven are securing training in the personnel office of the Army Air Service Command, U. S. War Department, San Bernardino, California, and from the city of Redlands—three being engaged in a reclassification study of all employees of the Air Base, and four conducting projects concerned with revision of the city ordinances and a survey of street lighting.

The Carnegie Corporation has made a grant of $225,000 over three years to the Brookings Institution for support of summer seminars dealing with methods and materials for teaching courses relating to American foreign policy. Brookings prepares special reports on current policy prob-

lems which, after discussion in the seminars, are distributed as teaching materials for university courses in international relations.

A regional association of Northern California political scientists was established March 13, 1948, at a meeting at Stanford University attended by sixty-three representatives from fifteen institutions. The following officers were elected: Eric C. Bellquist, University of California, president; Floyd A. Cave, San Francisco State College, vice-president; Earl C. Campbell, San José State College, secretary-treasurer; and, as council members, David M. French, Mills College, Charles Fairman, Stanford University, Bernard L. Kronick, Sacramento State College, Carl Buckman, Fresno State College, Luella J. Hall, Salinas Junior College, and John W. Smith, Stanford University.

The sixth annual spring meeting of the Pennsylvania Political Science and Public Administration Association was held at Harrisburg on April 23–24, with about fifty members in attendance. Professor Wallace Brewster, of Pennsylvania State College, presided at a session on "Political Science Approaches to American Government;" Professor Donald Harter, of the University of Pennsylvania, at a luncheon meeting on "Political Party Techniques in 1948;" and the president of the Association, Professor Jacob Tanger, of Pennsylvania State College, at a dinner meeting on "Developments in Pennsylvania Administration."

Meeting at Portland, Oregon, on April 17 and 18, political scientists from British Columbia, Idaho, Oregon, and Washington organized a Pacific Northwest Political Science Association. A program was devoted to both round-table discussions and general sessions. The following officers were elected: president, Kenneth C. Cole, University of Washington; vice-president, Maure Goldschmidt, Reed College; secretary-treasurer, Dell G. Hitchner, University of Washington; executive council members: H. F. Angus, University of British Columbia; U. G. Dubach, Lewis and Clark College; Claudius O. Johnson, State College of Washington; Eva S. Ogg, North Idaho Junior College; John Swarthout, Oregon State College; and Hugh J. Tudor, College of Puget Sound. The Association has designated the *Western Political Quarterly* as its official organ.

On April 24, 25, and 26 there was held at Ann Arbor under the sponsorship of the Institute of Public Administration of the University of Michigan, in coöperation with the Carnegie Corporation of New York, a Conference on the Organization of the Executive Branch of the Government. Political scientists who participated were William Anderson, Marshall Dimock, Rowland A. Egger, Herbert Emmerich, James W. Fesler, Joseph P. Harris, James Hart, Arthur N. Holcombe, Arthur W. Macmahon, Harvey C. Mansfield, Roscoe C. Martin, Lewis Meriam, Charles

E. Merriam, John D. Millett, Don K. Price, Wallace S. Sayre, Lloyd M. Short, Lent D. Upson, and John A. Vieg. In addition, some of the members of the Hoover Commission and its staff were present. Professor James K. Pollock, chairman of the department of political science and a member of the Commission, served as host, while Professor John W. Lederle, secretary of the Institute of Public Administration, handled local arrangements and Professor C. Ferrel Heady acted as reporter.

The Sixth Conference of Midwest Political Scientists was held at the Claypool Hotel, Indianapolis, April 30, May 1 and 2. The opening session on Friday evening was addressed by Professor Harold J. Laski, of the London School of Economics and Political Science, on "The Prospects for Democratic Government." He was introduced by George H. Watson, of Roosevelt College, through whom Mr. Laski's appearance was made possible. Six informal group meetings on Saturday morning dealt, respectively, with "Fair Employment Practice Commission Progress in the Midwest," "The Problem of Getting Students Interested in Practical Politics," "State Constitutional Changes in the Midwest," "Recent Developments in American Constitutional Law," "Political Trends in the Middle West," and "Labor and Industrial Relations." The annual business meeting, held in connection with a Saturday luncheon, was presided over by Harold Zink, retiring chairman of the Managerial Committee. Placed on the Managerial Committee for the ensuing year were Llewellyn Pfankuchen (*chairman*), Richard G. Browne, E. Allen Helms, Jack Reeves, H. W. Ward, and Harold Zink. Members of the new Program Committee are Paul C. Bartholomew (*chairman*), John L. Auble, Asher N. Christensen, John Brown Mason, and Robert F. Steadman. Harry W. Voltmer was continued as secretary-treasurer. A Saturday dinner session was addressed by President Henry R. Spencer of the American Political Science Association. On Saturday evening, Hans Leonhardt discussed "The Nuernberg Trials," and Edward H. Buehrig spoke on "American Policy and the United Nations." The program was concluded by two section meetings on Sunday forenoon dealing with "Political Trends in Europe" and "Political Trends in the Far East." Over 200 registrations made this the best attended meeting ever held by the Midwest Conference. The program committee was composed of E. Allen Helms (*chairman*), Paul C. Bartholomew, Marshall E. Dimock, Marshall Knappen, and William S. Shepherd. Wallace P. Rusterholtz was chairman of the committee on local arrangements. The Conference accepted an invitation of the University of Wisconsin to meet in Madison April 22–24, 1949.

BOOK REVIEWS AND NOTICES

America's Destiny. By Herman Finer. (New York: The Macmillan Company. 1947. Pp. 401. $5.00.)

America's Destiny is clearly, emphatically, and authoritatively defined in this timely and provocative book. But this is no narrow treatise on American foreign policy; it is rather an astute analysis of the present international crisis and its causes, with emphasis upon the rôles of Great Britain, Soviet Russia, and the United States. It may be said, in general, that the author defends Britain, blames Russia, and appeals to America—appeals to us as the great hope, in fact the only hope, for a peaceful world. At the same time, American policy, especially as it has evolved since the death of President Franklin D. Roosevelt, comes in for devastating criticism on account of its unpredictable changes, its vacillation and inconsistencies, its costly errors. But despite its mistakes and weaknesses, the United States still holds in its hands the crucial responsibility for peace and, in the author's view, if it uses its power with intelligence and will, has a good chance to succeed in its mighty task.

It has been remarked that international politics is a synthesis of many disciplines. This book bears out this opinion, for in his appraisal of the present situation the author reveals a profound knowledge of history, economics, government, foreign policy, geography, and sociology. True to the high standard set by Zimmern, Carr, Toynbee, and Woodward, he lends support to the view that the best writing on international relations still originates in the British universities.

Professor Finer makes a passionate defense of democracy, not only as a way of life, but as a road to peace. In fact, he agrees thoroughly with Woodrow Wilson that an international organization cannot succeed unless composed of self-governing democratic states.

By exposing current illusions which have done so much harm, especially in this country, the author renders an invaluable service. Wendell Willkie's "One World" concept is attacked as false. The tremendous differences still dividing the nations, above all nationalism, are convincingly described, and we are urged to study these divergencies rather than to build fallacious theories of global unity. The states of the world are today more nationalistic than ever, though the radio signal circles the globe in less than a second. In fact, many a modern invention, notably short-wave broadcasting, which promised to promote international understanding is now used to divide the nations rather than to unite them. That much-advertised prescription for all our ills—world federalism—is shown up as utopian, even quixotic.

On the head of Soviet Russia is placed the direct responsibility for

wrecking our hopes for a successful United Nations. In fact, Russia constitutes the main obstacle to world peace. Soviet depotism is not merely the invention of Lenin and Stalin, but has its roots deep in the amoral totalitarianism of nineteenth-century Russian anarchists, who held, as do the Soviets today, that the end justifies any means, however execrable. Probably no more devastating arraignment of Soviet policies, both domestic and foreign, has ever been written (see Chapter IX.) Followers of Henry Wallace would find some difficulty in answering this long list of charges. "With only variations of rhythm and force, the Soviet rulers conducted a shrewd, persistent, unabashed, cynical campaign against other nations suitable to favorable or unfavorable circumstances at different points of time."

How can we meet the challenge of Russian aggression? What is the best road to peace? The author explores all possible alternatives. Prudence? Bribes? Intimidation and force? None of these solutions appears wholly satisfactory; none is sure to work. With considerable hesitation—and who but a fool would venture today an unequivocal answer?—Professor Finer advocates adequate preparedness, moral and military, against any and all eventualities, as the best possible policy. He urges firmness without threats, in the hope that *in fear* Russia may abandon her present aggressive policies. (Also, the author throws in the suggestion, but without great conviction, that the vast campaign of popular education now under way among the Russians may lead them in the long run toward enlightenment, so that heresies may creep in, eventually launching a movement for democratic liberties.) "If," he concludes ominously, "the method of persuasion is impossible, and the responsibility of compulsion is not adopted, then peace in our time is a bubble destined to be pricked."

JOHN B. WHITTON.

Princeton University.

The Great Rehearsal. BY CARL VAN DOREN. (New York: The Viking Press. 1948. Pp. xii, 336. $3.75.)

The authorship of this work is sufficient guarantee that the presentation of the subject-matter lacks neither in excellent style nor historical accuracy. The drama of the story, while not over-done, is well underlined. The character delineations have never been better done.

Mr. Van Doren loses little time in getting down at once to the Constitutional Convention itself. After a brief account of General Washington's eminent position in the states at the time and a similarly brief account of Benjamin Franklin, "the philosopher," to whom he gives a place of greater importance than other historians of the period, he comes at once to the days immediately preceding the Convention. Local color is not lacking—the description of the State House in Philadelphia; Washing-

ton's arrival in his carriage and Franklin in his new importation, a sedan chair "borne by trusty convicts from the prison;" Franklin's dinner for the delegates at which the amiable sage served a cask of beer lately received as a gift from Jordan's brewery in London; the preliminary meetings of the Virginia delegates at the Indian Queen Tavern, "a large pile of buildings, with many spacious halls, and numerous small apartments, appropriated for lodging rooms." With many other items, Mr. Van Doren enriches his description of the coming together of what the *Pennsylvania Herald* of the time called the "collective wisdom of the Continent" meeting to deliberate "upon the extensive politics of the confederated empire."

In more than one account of this crucial period we have been told of the general indifference of the people toward the Convention during its sessions. From Mr. Van Doren we gather a different impression. There would seem to have been even a feeling of suspense in may quarters. Long before the day of public opinion polls, it was not easy to determine what the butcher, the baker, and Mr. Common-Man were thinking. Naturally, however, when the document came before the public, the debate was intense; and Mr. Van Doren makes the most of those fears so keenly felt and so little realized—for example, the assorted horrors that many people felt would be perpetrated in a district ten miles square, the seat of the new Leviathan, the national government.

Nothing new is brought to light in *The Great Rehearsal.* It is material well-known to American historians and students of American government. The method of presentation, however, and the choice of material make the work a valuable contribution. Undoubtedly it will find a wide audience among the general body of readers in America, for whom a realistic and readable work on the formative years of American constitutional government will have unquestioned value.

JEROME G. KERWIN.

University of Chicago.

The Development of the Constitution in the Case Law of the Supreme Court. By PERCY T. FENN. (New York: Appleton-Century-Crofts, Inc. 1948. Pp. xix, 733. $5.00.)

In one of the latest additions to the growing number of casebooks on constitutional law, Professor Fenn endeavors to present a collection of cases for college rather than law students. In so doing, he has produced a casebook which, without being unorthodox, presents three novelties not found in other case collections. These consist of the general notes of a socio-political nature preceding the cases in twelve of the thirteen chapters, more numerous and more lengthy selections from dissenting opinions, and a rather substantial collection of cases interpreting the Sherman and

Clayton Acts, the National Labor Relations Act, and the Norris-La Guardia Act, all of which bear upon interstate commerce, but which are primarily interpretations of statutes rather than of the Constitution.

The book is divided into five major sections: (1) "The Federal Union," which is a misnomer because this part deals exclusively with judicial review, some of its antecedents prior to Marbury v. Madison, and its expansion; (2) "The Great Concepts of the Constitution," which includes civil rights, contracts, due process of law, and the state police power; (3) "The Fiscal Powers of Government," consisting of the powers of the states to tax and federal monetary power, but containing little on federal taxing powers; (4) "The Interstate Commerce Clause," and (5) "The Revision of Dogma," consisting of chapters on the federal quasi-police power, the New Deal and state power, and the New Deal and national power. Within the framework of this organization, excepting Part I, the compiler has selected his cases judiciously, and he has manifested discernment in the portions of the cases selected.

Aside from the lengthier selections and from the greater number of dissents which illustrate the judiciary in action, it is doubtful whether this casebook does for the college student anything that the other casebooks fail to do. It remains, aside from the introductory notes, some additional comments interspersed between cases, and selections from arguments of counsel in two cases, exclusively a casebook. In his neglect of opinions of the Attorney-General, congressional debates, commentaries on the Constitution, and other sources of constitutional law, he has failed to provide valuable materials for the college student in a collection that would be truly novel and even unique.

If it is the purpose of Professor Fenn to present cases which illustrate the judicial function in operation and the process of judicial legislation as a consequence thereof, he has succeeded rather well. His selection of cases illustrates vividly the development of the changes in constitutional law under the impact of wars and depressions. However, if it is his purpose to provide a well balanced picture of the American constitutional system, his book falls considerably short of his goal. Missing from the volume are cases and materials dealing with the nature of federalism, such as national-state relations; interstate relations; the amending process; citizenship and suffrage; the separation of powers; the judicial power, aside from judicial review; the foreign relations power; and bills of attainder and ex post facto laws. In addition to these omissions, only two cases are included under the war power, and these relate to price-fixing and rationing. Missing, too, are some of the ancient landmarks which make up our constitutional heritage like McCulloch v. Maryland, Martin v. Hunter's Lessee, Yick Wo v. Hopkins, *Ex parte* Milligan, not to mention such later classics as Champion v. Ames, Missouri v. Holland, and the Curtiss-Wright case,

all of which are fully as significant to the college student as to the law student, and some much more so.

It follows, therefore, that the value of Professor Fenn's book as a text will vary according to the scope and method of individual courses in constitutional law. For those courses emphasizing judicial review, due process of law, the police power, and the commerce power, it will be excellent. For those courses which emphasize the structure and mechanics of our intricate governmental system, it will not be acceptable. Whether the placing of many of the cases decided for the most part from 1937 to 1947 in a separate section in order to emphasize the constitutional revolution within the Supreme Court will prove desirable is debatable, but this arrangement is no obstacle to topical assignments.

ROBERT J. HARRIS.

Louisiana State University.

American Foreign Service. BY J. RIVES CHILDS. (New York: Henry Holt and Company. Pp. viii, 261. $4.00.)

Descriptions of the work of the contemporary American Foreign Service are so rare that any promise of authentic information is welcomed. Mr. Childs in this book fulfils the promise by about fifty per cent. He describes in summary fashion the work of the Paris Embassy, including its consular division, and he deserves credit for this part of his function. He manages to show the complexity of work in the service and the proportion of the total function which is unglamorous routine. As Hugh Gibson remarked in *The Road to Foreign Policy*, "Glamor is about as rare in diplomacy as it is in a grocery."

Before reaching this part of his book, Mr. Childs, a career Foreign Service Officer himself, understandably makes the usual argument for a universal career service. Like most of these arguments, his case is based upon the relevance to negotiation of experience in the techniques of diplomacy and awareness of the nature of foreigners. He does not face, however, two questions which should be answered if the argument is to be convincing.

First, how does it happen that some of our outstanding diplomats were politically appointed, and continue to be? There is much to be said for Josephus Daniels' view in *Shirt-Sleeve Diplomat:* "Undoubtedly long training helps in the meticulous and technical duties of the office, but it does not give broad experience in public affairs."

Second, Mr. Childs, like other career officers when making this argument, assumes that the Foreign Service does not make policy but only carries it out, whether approving or not. This is naïve. Policy is affected directly by the kind of reports received from abroad, and any experienced reporter is aware of the extent to which editorial "slant," the selection of

what to report, and personal bias will enter reporting in the foreign service even as in journalism. Furthermore, in present practice the key positions for "political" policy in the State Department in Washington are filled by career Foreign Service Officers. Perhaps policy-making officials should be more responsible politically. At least, the question should be answered in an argument.

Mr. Childs writes as typical of the honest, competent Foreign Service Officer. To question the argument for a career service extending to the very top in all posts of the world is not to question the ability and integrity of the career service for the technical aspects of its jobs.

JAMES L. MCCAMY.

University of Wisconsin.

Federal Protection of Civil Rights; Quest for a Sword. By ROBERT K. CARR. (Ithaca, New York: Cornell University Press. 1947. Pp. viii, 384. $3.00.)

Professor Carr, executive secretary of the President's Committee on Civil Rights, and perhaps largely responsible for the form, if not the substance, of the Committee's report, uses words from Mr. Justice Jackson's opinion in Pollock v. Williams (1944) as the subtitle and theme of his book. Justice Jackson had held that it is not enough to safeguard civil rights against infringement by government. The negative words of the First Amendment—"Congress shall make no law," etc.—important as they are as a "shield" for civil liberties, must be supplemented by a positive program of governmental action. Government, that is to say, must become a "sword" and wage aggressive war against encroachments on fundamental liberties, whether by public officials or by private individuals.

This approach to the civil rights issue marks a distinct break with our traditional policy. Except for a brief period immediately after the Civil War, federal activity directed toward the "sword" technique has been, as Professor Carr says, "cautious, limited, and tentative, and has always faced an uphill fight constitutionally" (p. 24). The high barriers erected by the Supreme Court in leading cases, such as Barron v. Baltimore, Slaughter-House, and Civil Rights, have not been fully scaled even to this day. An important step toward the new approach was taken by Attorney-General Frank Murphy (now associate justice) in 1939 when he issued an administrative order creating the Civil Liberties Section in the Department of Justice. Murphy's action was exploratory, almost halting. The new unit was, his order said, "to make a study of the provisions of the Constitution of the United States and acts of Congress," "to make appropriate recommendations" in respect to civil liberties, and so on. Professor Carr gives Justice Murphy "a good deal of personal credit" for what has

turned out be to a significant agency of government. It was "his idea and his idea alone." This is not to suggest that no groundwork had been previously laid for such a step. Mob violence against unpopular minorities, combined with the research of scholars (such as Cushman and Swisher), Congressional investigations (such as that of the La Follette Committee on Education and Labor), and judicial opinions (often in dissent, notably, Justice Harlan in the Civil Rights Cases) revealed glaring inadequacies in the "shield" approach. Attorney-General Murphy's move was long overdue.

Professor Carr's book explores only one segment of the vexing civil rights problem, but it is an important one; and champions of civil liberties will discover in his findings many handles that can be readily pressed into their service. Furthermore, if the omnibus bill now pending in Congress becomes law, those called on to defend its constitutionality will find helpful clues in these pages.

Professor Carr tells first the story (and it is an absorbing one) of the creation of the Civil Rights unit, an act of solely administrative discretion without statutory foundation. Chapters 2 through 4 run the gamut of the constitutional and statutory phases, the latter constituting the core of the book and representing a significant contribution to our knowledge and understanding of the subject.

In his order establishing the Civil Rights Section (CRS), Attorney-General Murphy had declared that "the function and duty of this unit will be . . . to direct, supervise, and conduct prosecutions of violations of the Constitution and acts of Congress guaranteeing civil rights to individuals." Professor Carr shows in satisfying detail how the CRS, in pursuance of this objective, refurbished old statutory provisions, now Sections 51 and 52 of the *United States Code*, and made these more effective instruments against encroachments on fundamental rights by either government officials or private persons. Definite progress has been made, but much remains to be done. Despite the CRS's labors and a measure of success, the author finds himself somewhat discouraged by certain results. "It is a shock," he writes of the all-important Screws decision, "to find a Supreme Court which, more than any previous court in our history, has sought to foster the cause of civil liberty, confused by the case and disposing of it in such equivocal and divided fashion" (p. 113). Here three justices, two on the present Court, "revealed complete lack of sympathy with the use by CRS of Section 52 in police brutality cases," the specific incident being one of the most revolting in our history.

The book ends with the author's suggestions for developing and improving CRS's procedural techniques in conducting prosecutions and with an eloquent plea for more effective governmental action. "For a century and a half," the author concludes, "American policy toward the

problem of safeguarding civil liberties centered in the 'shield' approach. The danger to our rights, it was felt, lay in the federal government." The Bill of Rights itself reflects this philosophy. Now, largely through the work of the CRS, we are aware of the protective shield's limitations. Meanwhile, another instrument has been fashioned, a sword, also largely the work of the CRS. Though little or no constitutional sanction exists to support it, its usefulness has been amply demonstrated. "Now," the author implores, "that usefulness must be exploited, for we are living in troubled and uncertain times. Eventually, we may establish so well-ordered a society that no man will have cause to fear for his freedom. . . . The sword is a tested and useful weapon for the protection of this liberty. Let us not hesitate to use it."

Professor Carr has given us a timely and effective book, admirably conceived, balanced in organization and presentation—a work that meets the requirements of scholarship as well as literary artistry. In all these respects it may well serve as a model of research and writing in political science.

ALPHEUS T. MASON.

Princeton University.

Criminal Procedure from Arrest to Appeal. BY LESTER B. ORFIELD. (New York: New York University Press. 1947. Pp. xxxi, 614. $5.50.)

Sir James Stephen, the leading historian of the English criminal law, has stated that to be complete a study of criminal procedure should include its history, a description of it as an existing system, and a critical discussion of its component parts with a view to its improvement. The author of this volume has followed just such a formula in this study of American criminal procedure. Like his earlier work, *Criminal Appeals in America*, this book is a part of the Judicial Administration Series of the National Conference of Judicial Councils, of which Roscoe Pound is the director and Arthur T. Vanderbilt chairman of the executive committee. In each of the six completed volumes in this series, the method employed has been the same: to trace the history of the subject, to sketch the law as it now is, and then to formulate some sound working standards for the guidance of the judicial councils of the states, or other agencies concerned with an improved administration of justice in this country. In this case, the writer has not only attempted to state the history of each stage in a criminal proceeding, but has made an effort to compare American procedure with English, and to a lesser degree, with Continental procedure. The result is a most rewarding study in the important field of American criminal procedure, in which Bishop's treatise, published in 1856, has remained the standard work.

The need for a new, full-length study, is apparent. It is true that innumerable surveys of criminal justice have been made, and that a comprehensive code of criminal procedure has been drafted by the American Law Institute, with careful attention given to federal criminal procedure, as well. It is also true that the American Bar Association, the American Judicature Society, the American Institute of Criminal Law and Criminology, and many other organizations, have long been interested in improving criminal procedure and that a voluminous literature has appeared concerning it. Much of this literature has been of a piecemeal character, however, and in no way provides the integrated treatment of American criminal procedure from the standpoint of its past, present, and future conditions, which is the chief virtue of this volume.

This does not mean that all phases of that procedure are examined here. Criminal procedure, in its widest sense, includes the whole of the criminal adjective law—process, pleading, trial, evidence, and *habeas corpus*. The subject of evidence has not been dealt with in this volume, except incidentally. Nor has the law of search and seizure been considered. Moreover, interstate rendition and international extradition are omitted, as are *habeas corpus*, former jeopardy, coroners' inquests, procedure in petty cases, and parole and pardon. Venue is covered, but jurisdiction is not. These omissions, which were dictated by limitations of time and space, do not detract from the strength of the book, however, and are quickly lost sight of in the wealth of material found in nine closely packed and thoroughly documented chapters, which consider in turn the following aspects of criminal procedure: arrest, preliminary examination, bail, grand jury indictment and information, arraignment and preparation for trial, trial, motion after verdict, sentence, and judgment."

In treating these essentials of criminal procedure, the writer has remained faithful to his plan of not only examining the existing law and practice, but setting forth those changes which he considers necessary for an improvement of existing methods of practice, in the light of the best thought that has been brought to bear on the problem in the Anglo-American legal environment and elsewhere. He has succeeded admirably in this purpose, and he presents his synthesis in a clear and orderly fashion.

In conjunction with the earlier Orfield work, this volume makes available to students of political science, as well as to lawyers, judges, and legislators, a very useful survey of this neglected field of the law. A short introduction by the author throws light on his methods and purpose, and Arthur T. Vanderbilt lends strength to the volume by an excellent foreword. A usable index is appended.

FRANCIS R. AUMANN.

Ohio State University.

People and Process in Social Security. By Karl de Schweinitz. (Washington, D.C.: American Council on Education. 1948. Pp. x, 165. $2.00.)

This is the first study of the Committee on Education and Social Security of the American Council on Education, established in 1944 to explore the problem of training for social security administration and related problems. The study by the director of the committee may be presumed to reflect the collective thinking of the committee itself.

Approximately 75,000 persons are engaged in the administration of the various parts of the Social Security Act, under federal, state, and local agencies. Not only has this program become one of the major functions of government, but about half of the personnel, according to this study, are engaged in professional, semi-professional, or technical work—an unusually high proportion—for which college or university training is desirable. In addition to those engaged in the line or program activities of the several forms of social insurance and assistance embraced in the act, large numbers of trained personnel are needed for accounting, auditing, administrative management, legal action personnel administration, public relations, and other related work. From its inception, the Federal Social Security Board has required (and now it has been required by federal law) that all personnel be selected and retained on the basis of a merit system. In many states and most local units of government, the personnel engaged in the administration of social security has been the single exception to the rule of political appointments. The requirement of a merit system for social security administration, initially strongly opposed, has in many instances been adopted generally by the agency for other governmental services.

But it is not enough to establish merit systems. High standards of administration of social security require its close integration with the educational system of the country. The Committee on Social Security and Education has undertaken to study the knowledges and skills required in the administration of social security in order to throw light on the kind of training which the universities and colleges should offer to persons aspiring to careers in social security administration. Two difficulties immediately present themselves: first, few undergraduate students have definitely decided that they wish to prepare for such a career; and second, so many different and distinct skills and knowledges are involved in the administration of the rather diverse programs embraced in the term social security that one may well question whether the concept of "social administration" is valid and useful.

Mr. De Schweinitz does not recommend a special course of instruction for persons who would embark on a career in social security administration. He quotes with approval Mr. Arthur Altmeyer, Commissioner for Social Security, who says: "I would rather employ the student who comes

with an education in the liberal arts and no technical proficiency in social security than one who in attempting to learn social security administration has taken time from the liberal arts." The analysis by the author of the process of social security administration, and his recommendations concerning needed knowledges, skills, and attitudes, will be of great interest to the teacher of the social sciences; his observations on the tasks of the administrator will be of special interest to political scientists. The administrator, reasons the author, differs from the supervisor in that he must direct all of the different activities of the organization—accounting, statistics, research, administrative management, as well as line activities. No longer can he be a specialist or rely on his own technical skill in any one field, for methods and techniques are constantly changing. The administrator is the integrating force, and must provide the leadership. He must have a feeling for the public interest and for the development of institutional policies, the ability to interpret the program to the community and to take final responsibility for the actions of his organization. Concerning the educational preparation for an administrative career in the field of social administration, the author summarizes his findings as follows: "The person who comes from college with an orientation to the world and to society of which he is a part, with the capacity to arrive at synthesis, with skill in the art of communication, and with ability to learn, will have acquired a substantial portion of the equipment his career demands." He goes on to state that graduates who have had courses in the social sciences are, in general, better prepared than others for such careers.

The process by which a great social program enacted into law is translated into policies, procedures, and action, and extended to millions of people, and the attitudes as well as the skills necessary for its administration, are discussed with great understanding and insight by the author. It is to be hoped that subsequent publications will go further and make somewhat more specific suggestions and recommendations concerning courses of instruction that would be suitable for persons training for such a career.

JOSEPH P. HARRIS.

University of California, Berkeley.

Industrial Mobilization for War. BY THE WAR PRODUCTION BOARD HISTORIAN AND STAFF. (Washington D.C.: Civilian Production Administration. 1947. Pp. xiii, 1016.)

Volume I of *Industrial Mobilization for War* deals with program and administration. It is the result of the work of eleven authors. At least two of the number, Charles M. Wiltse and Carroll K. Shaw, are political scientists. Another of the same profession, James W. Fesler, supervised and reviewed the volume. These men and their colleagues deserve hearty congratulations on the result of their efforts. They have shown that offi-

cial histories can be written without the "whitewashing" which has characterized some Budget Bureau, Office of Price Administration, and War Department publications in this field.

The volume is not recommended for light vacation reading. Its thousand pages bristle with footnotes and details. There is no stimulating thesis advanced in its pages. As noted below, the reader is not spared the pains of following through the involved details of the various bureaucratic birth-pains of the War Production Board. Statistics and alphabets are used very freely.

The virtues of the volume are for serious students of bureaucratic functioning and for the men who will be shaping the structure of World War III. This book, much larger and more detailed than Baruch's book on industrial mobilization in the first war, will contain many of the answers to organizational problems of the future. It speaks frankly of the slow reaction to the needs of the times during the National Defense Advisory Commission period. The disagreement between Knudsen and others, such as Nelson and Henderson, over plant expansion in 1940 is perhaps not quite as sharply portrayed as it should be, but it is commented upon. The unclear relations of Palmer (Defense Housing) and Hillman (Defense Labor) are noted. Difficulties between the functional divisions of the Office of Production Management are sharply outlined, as are the problems between the Office of Production Management and the Office of Prices and Civilian Supply. The hopelessly confused situation under SPAB is also presented.

Good administrative history must look for conflicts, explore them, and comment on them fully. Fesler and his staff have recognized this more clearly than any other group of the numerous World War II historians.

Like every review, this one must end with some of the difficulties of the volume. More stress is laid on inter-agency than on intra-agency conflicts. The material on program is presented in alternate sections not too skillfully woven into the administrative material. As is inevitable with a study made by a semi-independent staff, largely on memoranda, reports, and other records, there is little of the color which characterized WPB's life. These criticisms should not be taken too seriously. No writer or group of writers can put all facets of a great administrative agency into one volume. The present authors have made a splendid job of what they set out to do.

GEORGE C. S. BENSON.

Claremont Men's College.

Rebuilding the World Economy; America's Rôle in Foreign Trade and Investment. By NORMAN S. BUCHANAN AND FRIEDRICH A. LUTZ (New York: The Twentieth Century Fund. 1947. Pp. xiii, 434. $3.50.)

The series of international crises since the military defeat of the Axis

powers has made it imperative for the American public to consider carefully policy proposals that may aid the United States in establishing, even in part, a postwar world of prosperity and harmony. This volume by Professors Buchanan (of the University of California, Berkeley) and Lutz (of Princeton University) is a distinguished analysis of the problems and the alternative remedies or solutions involved in world economic reconstruction today, with special emphasis on the rôle of the United States.

After sketching the special conditions that enabled world trade and finance to develop along *laissez faire* principles within certain limits between 1815 and 1914, the authors show how drastically World War I, the Great Depression of 1929, and World War II damaged the nicely-balanced world economy of 1914. They demonstrate that the key postwar economic problem is the tremendous adjustment of the present international distribution of governmental and business claims and obligations to the world changes in different countries' industrial capacity, labor skills, and agricultural production.

The authors then devote the remaining two-thirds of the text to a penetrating exploration of the fundamental changes in the pattern of world trade and finance that will be needed for the repayment of war debts and the supplying of relief, rehabilitation, and reconstruction to devastated and low-income areas. I know of no other single study which gives such an admirable synthesis and application of nearly all the best studies and conclusions on the subject. Only the economic specialist will miss references to such treatises as A. P. Lerner, *The Economics of Control*, and J. L. Mosak, *General Equilibrium Theory in International Trade.*

In summing up their extended analysis, the authors of *Rebuilding the World Economy* present two interdependent programs. The first, covering the special problems in the transition period from war to peace, stipulates five necessary conditions for economic stability, multilateral trade, and free-exchange markets: (1) relief for the war-needy to restore the most important production factor, manpower: (2) capital exports to countries with damaged productive apparatus so they may achieve reconstruction; (3) solving Britain's (and the other war-allies') debt problems by reducing the annual payments for interest and amortization to manageable proportions; (4) adjusting the existing structure of foreign exchange rates to harmonize with the relative movements of national price levels; and (5) halting inflation in countries participating in international trade.

Professors Buchanan and Lutz center their second program on three objectives essential to a long-range restoration of a world economy: (1) achievement of international peace and political stability; (2) avoidance of serious world depressions through intelligent high and stable employment policies in all countries, especially the United States; and (3) reaching of an international agreement among nations on certain rules of con-

duct appropriate to multilateralism. In the authors' eyes, these new rules must eliminate (or minimize) the practices current before World War II: currency warfare, quantitative trade restrictions, subsidies, foreign exchange control, and calculated economic exploitation of weaker countries through bilateral trade agreements. The best instruments for breaking away from these and the outmoded pre-1914 institutions are the International Monetary Fund, the International Bank of Reconstruction and Development, the emerging International Trade Organization, and the Economic and Social Council of the United Nations. The last-named agency is favored as the coördinator of the national full-employment and monetary policies in the different countries.

These agencies and proposals would promote and harmonize the powerful and often unnecessarily conflicting pressures by different groups for income security, industrialization, and multilateral trade. They are in accord with the key suggestions made in the 1945 League of Nations study, *Economic Stability in the Post-War World*. But the authors have purposely refrained from developing some of the policy implications of their analysis so that the Twentieth Century Fund's Committee on Foreign Economic Relations could frame a special detailed critique on current American foreign economic policy. In the light of their evaluation of the record, the Committee, headed by Professor Winfield W. Riefler (of the Institute for Advanced Study, Princeton) advocates a six-point program of action, in harmony with the Buchanan-Lutz analysis, but going beyond it in detailed advocacy of ways and means. Their main recommendations (pp. 293–315) are that the United States government should (1) immediately establish a multilateral system of trade among whatever nations are now able and willing to join; (2) give direct aid on an adequate but realistic basis to help war-exhausted countries rebuild their economies and rejoin an open system of world trade; (3) give the Export-Import Bank increased resources and primary responsibility for financing the American share of this rehabilitation program; (4) get the International Bank for Reconstruction and Development to concentrate on long-range international reconstructive and developmental programs so geared as to promote long-term stability of the flow of investment, and consequently of international trade; (5) move to create an international buffer-stock agency designed to promote stability in the great world markets for raw materials and prime commodities by accumulating stockpiles of storable raw materials during depressions and disposing of them in periods of prosperity; and (6) expand the volume of American imports by vigorous use of the Reciprocal Trade Agreements Act and technical changes in our tariff-law administration.

There is little in these proposals with which one who is not an isolationist or Stalinist can quarrel. Events since the publication of the book,

though they have moved far faster and more drastically than the authors foresaw, have served to underline the soundness of the basic analysis and constructive recommendations. The Marshall Plan is in fundamental harmony with the ideas advocated, as the reader can discover by checking the volume against the Department of State, *Outline of European Recovery Program*, Senate Foreign Relations Committee Print, 80th Cong., 1st Sess. But this reviewer feels that the authors and Committee should have anticipated the increasing gulf between the Western powers and the Soviet *bloc*, with the cleavage of the globe into Two Worlds, and the growing likelihood of an armed show-down. Then this volume could have been so modified as to serve even more directly the needs of statesmen and public during the coming critical days.

Two points of correction need be noted. The authors seem unjustified in ignoring the security intent behind the severe Allied programs for Germany after World Wars I and II (pp. 29, 167). They seem to have misjudged or over-emphasized the possible world production of food in World War II (pp. 93–95). But these faults are minor. The book stands higher than any rival works so far published.

SIDNEY RATNER.

Rutgers University.

Exporting Arms; The Federal Arms Export Administration, 1935–1945. BY MURRAY STEDMAN. (New York: King's Crown Press. 1947. Pp. x, 150. $3.00.)

To those who have served in the Department of State, Murray Stedman's little book sounds like news from home. He shows how personality conflicts, preoccupation of chiefs with high policy matters, and a simple shortage of responsible leaders at the middle echelons of administration affected adversely the arms export control during the war years. In fact, if we were addicted to eighteenth-century title pages, Mr. Stedman could have another sub-title: *Being also in Part a Study in Administrative Leadership: With an Indication of the Effects of its Presence and its Absence in a Particular Case.* During the years he organized and supervised the control unit (1935–41), Joseph C. Green secured through personal consultation with the geographic offices a harmonizing of functional and areal views and of policy and operations (p. 115). After 1941, until the establishment of the new Armaments Committee in 1946, great confusion appears to have existed with respect to areas of responsibility for formulation of policy decisions (p. 36).

Mr. Stedman, who in 1945–46 was employed in the Munitions Control Section of the Department of State, essayed a three-fold purpose in writing this book: "to examine the munitions control organization of the Department of State as a case-study in administration; to evaluate the

purposes and accomplishments of munitions control; and to trace the development of munitions control from 1935 to 1945." He has achieved that purpose with commendable brevity, restraint, objectivity, and precision. A short, compact chapter deals with the background of the regulatory system, primarily from the beginning of this century up to the ratification of the Geneva Arms Traffic Convention of 1925 in 1935 and the adoption of the Joint Resolution of August 31, 1935. Happily, Mr. Stedman puts the hue-and-cry of the Nye investigation into its proper perspective. Similar compact chapters deal, successively, with the administrative machinery established by the neutrality acts, the techniques of registration and licensing and the practice thereunder, the preparation of reports and statistics, enforcement (including supervision), coördination of arms control activities inside the Department of State, and inter-departmental control. Throughout, the analysis is productive of shrewd, practical suggestions for improvement. The relation of an effective system of national control to effective international control is well brought out (pp. 126–128).

The data Mr. Stedman adduces from official documentation supports, in the judgment of the present reviewer, his conclusion: " . . . To insure good administration in arms control or in any other of its functions, the Department of State must observe the three fundamental principles critically analyzed in this work. These principles are: the harmony of policy-making and operations, the necessity of stability in organization, and the necessity of establishing superior authorities which can and will enforce coördination should policy-making committees be unable to arrive at decisions" (p. 135).

HENRY REIFF.

St. Lawrence University.

A National Policy for the Oil Industry. By EUGENE V. ROSTOW. (New Haven: Yale University Press. 1948. Pp. xvi, 173. $2.50.)

This is announced as the first in a series of studies of national policy resulting from a program of research undertaken at Yale University by the departments of economics and political science and the School of Law. An essay rather than a detailed analysis, it summarizes as much of the geological, historical, economic, and legal data as is essential to the discussion of a national oil policy, and no more. Notwithstanding defects discussed below, it is a valuable case-study in public policy.

After presenting an historical and descriptive picture of the organization of the industry, its market structure, and the system of oil law, Professor Rostow analyzes the legal and industrial controls applying to production of crude oil, transportation, refining, and gasoline marketing. He also has a chapter on the foreign oil policy of the United States. His

conclusion is that a relatively small number of major integrated companies exercise effective control, directly or indirectly, over all phases of the industry, and through price leadership and other arrangements minimize competition among themselves. The system of oil law is described as "a fantastic and inordinately complicated patchwork of state and federal regulation, and of industrial self-regulation" (p. xv). The law of capture is conceded to be wasteful, but the author contends that the various state and federal prorationing schemes adopted in the name of conservation have not in fact been conservation measures and have tended to strengthen the monopolistic elements in the industry by limiting production.

The author believes that the present monopolistic organization of the industry is economically wasteful, technologically unnecessary, and socially and politically undesirable. The national policy he proposes rests mainly on two measures. One is a federal statute requiring the operation of all oil fields as units of production. The second is an anti-trust decree dissolving the great companies vertically into separate units controlling production, transportation, refining, and distribution, and providing some further horizontal division of the larger units. Pipe-lines would continue to be regulated by the Interstate Commerce Commission. Other measures recommended include the elimination of tariffs and other restrictions on the importation of petroleum products.

The author's sophisticated analysis of the existing system of legal and industrial controls is in sharp contrast with his readiness to accept at face value the theoretical benefits of competition. One of his major arguments for a competitive organization of the oil industry, and of industry in general, is that it would simplify the task of government. Once the proposed anti-trust decree had been put into effect, "the community could safely rely on the market as its chief agency of economic control," and could therefore "free the industry of special and continuing administrative direction, apart from the vigilant scrutiny of the Anti-Trust Division of the Department of Justice" (p. 123). We are told also that "monopolistic concentration would make direct state controls, and the ultimate socialization of industry, far more likely than a régime of competitive smaller business," and that "government can safely allow it [monopoly] far less freedom than competitive business" (p. xiii). Such statements typify a deep confusion in the competitive ideal. It is a truism that *if* production and prices are competitively determined, the public is protected against monopolistic influences. It is *not* a truism that a competitive organization of industry can be established and maintained by a minimal expenditure of governmental effort. In the light of historical evidence, it can certainly be argued that enforcement of Professor Rostow's blue-print of perfect competition would require a governmental effort of

fully as great magnitude as that required in regulating a monopoly. The effort might be worth while. The reviewer's point is merely that underestimation of the effort required is a disservice both to the cause of competition and to the development of a practicable approach to the study of public policy.

HUGH L. ELSBREE.

Legislative Reference Service,
Library of Congress.

The United States and the Caribbean. BY DEXTER PERKINS. (Cambridge, Mass.: Harvard University Press. 1947. Pp. xxi, 253. $3.00.)

The first half of this volume describes the life of three island republics of the Caribbean area and six small republics of Central America. The colonies of the Caribbean and the larger continental republics of Mexico, Colombia, and Venezuela are excluded. What gives Professor Perkins' work unity is that he is dealing with the very small near neighbors of the United States in which the doctrine of intervention found its chief application and in which it was found wanting.

The second half of the book describes the abandonment of intervention and the effort of the United States to become a good neighbor, to make its great power palatable to the sensitive peoples of these republics. The author is never backward in awarding praise or blame. The words "right" and "wise" recur in contexts which are normatively ambiguous, but his judgments are even-tempered and restrained. Thus, "The [Haitian] occupation might seek to lay the foundations of economic progress and of ordered peace; but it could by no means guarantee, in twenty years or even in thirty, forty, or fifty years, that on these foundations a democratic government could be built. In the last analysis, the form of a people's institutions must depend upon that people itself; popular rule, by very definition, could not be successfully imposed; were it to come at all, it would have to come by slow evolution. Why, then, in the face of severe criticism both at home and abroad, commit oneself to an endless supervision of the affairs of another state? Why, indeed?" (pp. 144–145). The trouble with intervention apparently is not that it is wicked, but that it is futile.

As for the good neighbor policy, Uncle Sam gets an A for effort, but only a B– for manners. The chapter on "Psychological Background" records the gratuitous gaucheries of irresponsible Americans and the wholly unnecessary resulting wounds to Caribbean sensibilities.

Only in his judgments on American policy during 1933–34 when, with Mr. Sumner Welles in Cuba, that country enjoyed a succession of five governments in less than a year, does Professor Perkins hesitate. United States failure to recognize the régime of Dr. Grau San Martín, present

president of Cuba, may have thwarted for nearly a decade the will of the Cuban people. But the author may perhaps be forgiven for reserving his position on this point, since the editor of the "American Foreign Policy Library," in which this volume appears, is none other than Mr. Welles, whose detailed knowledge of what happened in Cuba is necessarily more complete than that of any college professor.

This is an urbane and readable introduction to the problems of an area whose future well-being depends largely upon a sympathetic understanding of its needs by the government and people of the United States.

WILLIAM T. R. FOX.

Yale University.

Democracy in the Dominions. By ALEXANDER BRADY. (Toronto: University of Toronto Press. 1947. Pp. vii, 475. $4.25.)

Those of us who have known for some years of Professor Brady's project of writing a study on Commonwealth governments feel amply rewarded now for our patience. The result of his labors brings together in a single volume not only a compendium of facts but a penetrating consideration of basic problems. It is not a series of unrelated studies of the various dominions, but a comparative treatment of the four major countries which grew to nationhood in the new era of the Commonwealth.

While Keith in his voluminous but oftentimes repetitious writings is inclined to concentrate on constitutional phases, Professor Brady has an appreciation of the internal political and social forces which shaped policies and institutions. In his opening chapter on "Inheritance and Environment," he points out how the expanding frontier common to all of the dominions no less than the United States promoted the development of democratic ideas and structures. But the Commonwealth nations were favored in that their development took place at a time when industrial capitalism brought to the world prosperity and a rising standard of living in which democratic institutions could grow. At the same time, a *pax Britannica* permitted the dominions for the most part to look inward and leave foreign policy to the concern of the Mother Country. However, a point which Mr. Brady does not raise in this connection could be made in that the most marked development in national status and international recognition occurred precisely as a result of the participation of the dominions in foreign affairs brought on by the First World War and its aftermath. As for the first point above, the author indicates that the industrialization upon which capitalistic society is based resulted in the promotion within the dominions of an economy of a collectivist character. Particularly in Australia and New Zealand has public ownership been fostered, and at the same time leadership has been given in the field of social legislation under the aegis of labor governments.

Some variation in chapter headings is to be found in the treatment accorded the various dominions, but basically the same pattern is followed. After giving the setting in its geographical and historical features, the author deals with the constitutional phase as found in federal or unitary structure, then parliamentary institutions are sketched, and finally a chapter on parties follows. In South Africa, special consideration is called for of the problems of race and color and economic and social policies. In distribution of number of pages of text, South Africa, Australia, and Canada, in that order, receive a varying share of the space, with New Zealand approximately half of the space accorded her sister dominion down under. As the bibliography and footnotes indicate, the two senior dominions possess by far the richest resources in political writings. This colors the treatment, for the author is at his best when writing of Canada and Australia. Since Professor Brady is a Canadian, it is not surprising that his problem for that dominion should seem to be one of condensation and selection of the most revelant. Canadian readers can easily fill in the details at which he can only hint. Others may find in Professor Dawson's new study by the same publisher an excellent companion not as conveniently available for the other dominions.

It is interesting that in the treatment of political parties the author appears much more informative and clear in his treatment of the Australian scene than that of Canada—although in the latter case there is a welcome realism in approach. In South Africa, the period covered is of much shorter duration and admits of some detail. New Zealand seems to offer the least.

The civil service, and public administration as a field in general, is nowhere much dealt with, but doubtless this can be explained by the absence of competent studies in the field. It is not to be expected in a general survey of the nature of this book that the author should compile from government documents what should be at hand in the form of preliminary studies. On the subject of civil liberties in Canada, Professor Brady rather delicately skirts the topic; but what he hints at is in great need of an airing.

It would be captious to list omissions of a bibliographical character, and there are a few of obvious titles; but it seems almost difficult to understand how Keith could be so neglected in the footnotes, although of course the slight is repaired in the bibliography. In the matter of footnotes, it is not clear what plan the author is following, for in some cases he goes far afield (e.g., footnote on p. 231), while in another place omitting, for instance, a mention of Rogers' study on the compact theory of Canadian federation. Doubtless Professor Brady wished to spare his readers and his publishers the tedium of lengthy footnotes which his rich scholarship could easily have supplied.

To say that in this volume the author has filled a long-felt need would be trite, but none the less true. It is hoped that it will be an encouragement for further studies of a comparative character, while at the same time it illustrates that within the Commonwealth there is a paucity of institutional studies. Political science as a study apart from theory or constitutional history has been too long neglected in the dominions.

LIONEL H. LAING.

University of Michigan.

The Government of Canada. BY R. MACGREGOR DAWSON. (Toronto: University of Toronto Press. 1947. Pp. x, 662. $5.50.)

This book deserves an outstanding place in its field. In its ample pages the reader will find a comprehensive and well-balanced study of the Canadian federal government in its evolution and organization, with special attention to such matters as legislative procedure, administrative practice, and the party system, all of which have been rather too sketchily covered in earlier writings on Canadian governmental affairs.

Beginning with a chapter on the constitutional background, there is an excellent survey of the events leading to the confederation of the provinces in 1867. The proceedings of the Quebec Conference, at which the organization and powers of the new federal government were agreed upon, are clearly and accurately outlined. Professor Dawson quite rightly portrays Macdonald as the James Madison of this conference, crediting to his influence the adoption of such constitutional landmarks as the appointment of the provincial lieutenant-governors by the federal authorities, the right of the latter to disallow provincial legislation, and the bestowal of all residual powers on the federal rather than on the provincial governments. It might well have been mentioned, however, that Alexander Hamilton, eighty years previously, had submitted a quite similar trilogy of propositions in his rejected "Draft of a Constitution for the United States." Macdonald was familiar with Hamilton's draft and in all likelihood was considerably influenced by it.

While there are initial chapters on dominion status and on the nature of the Canadian constitution, together with a survey of its development during the past eighty years, the main body of the book is devoted to a systematic and accurate description of the executive, administrative, legislative, and judicial branches of Canada's federal government. Both principles and practice are carefully explained, with occasional comments on the weaknesses of the system as the author sees them. A noteworthy feature of the volume is its elaborate discussion of the Canadian civil service, a topic on which the author wrote a comprehensive monograph several years ago. The chapters on party organization and party activities also bring together much significant material which cannot be found in

any other book. While comparisons and contrasts with the party system in the United States are suggested occasionally, there might well have been more of them—for example, in such matters as the national and provincial party conventions, the framing of party platforms, the distribution of political patronage, the limitation of campaign expenditures, and the extent of the spoils system in the two countries. The similarities are greater than most students of comparative government realize.

The author makes allusion to the continued interest of Canadians in the trappings of vice-royalty. The President of the United States, he remarks, is required to spend a great deal of time and effort in giving ceremonial addresses; but in Canada this function is largely assumed by the governor-general, who has little else to do, thus relieving the prime minister of a time-consuming chore. And, strangely enough, most people prefer to hear the former, who has no political authority, thus disclosing what the author terms "a preference so bizarre that its elucidation must be left to the ingenuity of the social psychologist" (p. 185).

An important shortcoming of the book is its failure to include any account of either provincial or local government in Canada. There is a discussion of the financial relations between the federal and provincial governments, as well as occasional comments on provincial and local problems, but no one would learn from this book how these subordinate governments are organized, what they do, and how they do it.

Within the limits which he set for himself, however, Professor Dawson has done a remarkable job. He has combined historical background, a description of governmental forms, and explanations of current political practice in excellent proportions. Throughout the book there is evidence that the author is well versed in the philosophy of government and has also made himself familiar with the perplexing array of judicial decisions on constitutional issues. On controversial questions, he deftly avoids any display of partisanship, leaving the reader to form his own judgment from the elaborate and authoritative data which the book provides. References to the author's sources of information are fully and carefully given; they cut a wide swath through the whole domain of Canadian history, jurisprudence, and politics.

One of the most praiseworthy features of this sturdy book, moreover, stems from Professor Dawson's kindly wit and dependable sense of humor. These have enabled him to lighten the specific gravity of even his most erudite pages.

WILLIAM B. MUNRO.

Pasadena, California.

What Parliament Is and Does; Being an Introduction to Parliamentary Government in the United Kingdom. BY LORD HEMINGFORD. (Cam-

bridge: At the University Press. New York: The Macmillan Company. 1947. Pp. viii, 117. $2.00.)

For many years, Sir Dennis Herbert was Chairman of Committees and Deputy Speaker of the House of Commons. Now, after his removal to "another place" as Lord Hemingford, he has written a little book on the procedure of the English Parliament, a task for which he is thoroughly qualified. The book is written for students, and gives a simple and lucid description of one of the difficult and important areas of English government. Sir Erskine May's great handbook and the briefer *Introduction to the Procedure of the House of Commons*, by Sir Gilbert Campion, the present Clerk of the House, are both understood with difficulty even by the initiated. Lord Hemingford, without sacrificing accuracy, has made the subject clear and comprehensible.

The author describes the organization of the two houses, their officers, and their relation to ministers. He explains how bills are introduced and carried through the House of Commons, and describes the committee system. He has a chapter on finance. He discusses the important points of parliamentary procedure, including the conduct of debate, questions, the closure, and the practices determining the position of the member. No one previously has made House of Commons procedure so easy to understand. Despite many years of committees on the reform of parliamentary procedure, and the Labour party's occasional impatience with ancient forms, no essential change in procedure has resulted from the general election of 1945. As Lord Hemingford points out, standing committees are used more constantly, and the opportunities for private members' business have been suspended. These things are not revolutionary; they are hardly exceptional. Otherwise, things go on much as before.

EUGENE P. CHASE.

Lafayette College.

Postwar Governments of the Far East. EDITED BY TAYLOR COLE AND JOHN H. HALLOWELL. (Gainesville, Fla.: Kallman Publishing Company. 1947. Pp. 271. $1.75.)

The editors of the *Journal of Politics* have aided materially in filling a large gap in our information on and understanding of Far Eastern politics by providing this excellent symposium of twelve essays. Written by men of recent experience as advisers, administrators, or observers of government in the areas respectively assigned, the symposium is composed of an introductory essay on background and trends, three essays on China, and one each on Japan, the Soviet Far East, Korea, the Netherlands East Indies, India, British Southeast Asia, the Philippines, and French Indo-China.

Professor Paul H. Clyde's characterization of the traditional ideas of

Far Eastern cultures is penetrating and helpful to consideration of the great problems that beset any Western program of rapid democratization. His insistence that Asiatic politics must and will determine their own destinies points to the essential but as yet ungrasped principle of East-West relationships. Professor Chen Chih-mai contributes a clear but uncritical description of the now constitutionally ordained Chinese system of government. He does not attempt to explain actual procedures nor to estimate the prospects of constitutionalism. Professor Paul M. A. Linebarger delineates with originality and provocative comment the international as well as the domestic forces in China's postwar politics. His résumé and critique of the Marshall mission are masterly; his optimism as to the prospects for democracy is welcome. One may question his statements that if there is a state in China, "Chiang is the lawful commander-in-chief," that Chiang "is obsessed with the idea of democracy," and that "the Generalissimo regained in China, through Americans, a tiny fraction of what he lost in Manchuria to Russians." Mr. Michael Lindsay deals more fully and specifically with government in the Communist areas, devoting himself particularly to explaining the position of the leaders during the period of negotiations with the Kuomintang. He sees both the political and the land program as reflective of practical considerations rather than strict Marxian principles, but as tending to greater extremism because of the Kuomintang's failure to meet reasonable conditions for a coalition régime. "Unless American intervention prolongs the civil war indefinitely," he writes, "the most probable outcome is some kind of agreement when it finally becomes clear to the Kuomintang that the ultimate conclusion of the civil war will be military defeat."

For a well-balanced and well-informed profile of postwar developments in Japan, Professor John W. Masland's chapter is not likely to be excelled. He stresses the uncertainties latent in the occupational program of imposed constitutional and legal reform, accompanied by apprehension over labor's rising self-consciousness and by complacency toward bureaucratism. Professor John N. Hazard's contribution is a concise but comprehensive survey of the Russian political organization for Siberia, treaty position in Outer Mongolia, Manchuria, Korea, and Japan, and tenets of immediate and long-range policy, presented without evaluation but with clarity and understanding. Professor George M. McCune's exposé of Korean, American, and Russian ineptitude admirably and critically describes the tangled skein of Korean politics. It suggests rather than affirms the conclusion that leftism rather than evolutionary liberalism would succeed Japanese imperialism were American and Russian forces to be withdrawn.

Professor H. Arthur Steiner contributes a very substantial study of the birth-pangs and tentative structure of the Indonesian Republic, the

efforts of the Netherlands to devise a new formula of empire, and the unique union which has been agreed upon, but which awaits progress toward consummation. Within the forty pages allotted to him, Professor Winston W. Ehrmann has been able to preface his thorough analysis of recent political development in India with relevant geographical data. Compactly written and illustrated with an outline map, this chapter is at once a valuable guide to Asia's most complex congeries of political problems and an expression of the physical and cultural resources through which India may realize her potential greatness. Mr. H. Duncan Hall's account of the extension of parliamentarism and self-government in Ceylon, Burma, and Malaya, which he views with combined sympathy and concern, rounds out the treatment of British colonial areas. Professor Harold M. Vinacke deals with the restoration in the Philippines, expressing well-justified criticism of American failure to redeem war-time promises of economic restoration and willingness to assist to power collaborationists with the Japanese. The symposium is concluded with Professor Charles A. Micaud's essay on Indo-China, which maintains the uniformly high standard of the whole.

Area studies will be the principal beneficiaries of this useful collection, which is welcome evidence of the increasing interest and the expansion of scholarship in that field.

HAROLD S. QUIGLEY.

University of Minnesota.

Recognition in International Law. BY H. LAUTERPACHT. (Cambridge: At the University Press. 1947. Pp. vii, 442. 25s.)

The Anglo-American literature has needed a comprehensive monograph on recognition for a long time. It is fortunate that as competent an author as the Whewell Professor of International Law of Cambridge University has undertaken this task. His book is divided into four parts dealing with the three most important instances of recognition, viz., that of states, of governments, and of belligerency and insurgency, and, in addition, special problems of recognition. Anyone familiar with the writings of Professor Lauterpacht will expect a somewhat formal if not formalistic approach, and a reading of the book will not disappoint him in that respect. The author considers international law a "science" and endeavors to develop a general legal theory of recognition which, if properly analyzed "by reference to a jurisprudential principle of order," consistently explains all of its types and forms (p. 3).

Professor Lauterpacht is basically an adherent of Kelsen's monistic theory, as he himself clearly states (p. 172), but he has travelled a good deal from the "pure" theory by acknowledging the "sociological basis" of the legal system and admitting the "law-creating influence of facts"

(p. 427). This is, of course, nothing but the celebrated "normative Kraft des Faktischen" of Georg Jellinek, *Allgemeine Staatslehre* (2d ed., 1905), 330, to whom—quite unjustly—no credit is given. However, in defining the field of inquiry of the student of international law, Professor Lauterpacht still wears the blinders of the Viennese school: "The lawyer abandons his legitimate province once he begins to probe into the motives which have induced governments to express their obligation to act upon a legal rule. Such realism may be appropriate for the historian and sociologist" (p. 25).

Part I, dealing with the recognition of states, is almost entirely devoted to the character of recognition, and lays the ground-work for the whole subsequent discussion. The author envisages recognition as a *unilateral* act of *legal* nature which is *constitutive*, as between the recognizing state and the community so recognized, of international rights and duties associated with full statehood. The view that recognition has only political character or is merely declaratory is repudiated. Premature recognition and failure to accord recognition are both revealed as violations of international law. The argument that the constitutive view excludes any legal duty by a state to a new community before its recognition is answered by the slightly sophistic explanation that this duty is owed, not to the new state, but to the international community as such. This is, of course, Jellinek's old doctrine of "right by reflection" (*Reflex-recht*) (op. cit. *supra*, at page 404); and again we miss the proper reference.

Recognition of new governments, according to the author, is essentially of the same character as that of new states. The chief difference consists in the fact that it is not constitutive of the existence of legal rights and duties, but only of the *capacity* of the new government to represent legally its state *vis-à-vis* the recognizing state. Again international law fixes the conditions which must concur in order that recognition be not premature but legally owed. The author admits frankly that the practice of both Great Britain and the United States has not predicated recognition in all cases upon the compliance with identical conditions, but he explains this fact as "a temporary adaptation to a transient period of political retrogression" (p. 139).

The third part deals with the recognition of belligerency and insurgency. Four conditions must concur: an armed conflict of general character, administration by the insurgents of a substantial portion of the national territory, conduct of hostilities in an organized fashion pursuant to the rules of warfare, and the necessity for outside powers to define their position (p. 176). If these conditions are not present, recognition is illegal and premature; otherwise it is owed as a legal duty. Recognition of insurgency, according to the author, has a positive and a negative aspect. It implies that the insurgent forces have not the status of belligerents, but have ob-

tained a position which compels foreign powers to deal with them as an international personality on a limited basis. Unrecognized insurgents are not, however, for that reason *alone*, pirates.

The last part deals with three important problems flowing from the acceptance of recognition as a legal institution, namely, de facto recognition, implied recognition, and non-recognition. These sections are probably the most interesting portions of the book. The legal consequences of *de jure* recognition of one government and *de facto* recognition of another has exposed domestic courts to harassing questions, particularly in the field of sovereign immunity of vessels. Although the author devotes some space to the problem (pp. 343 ff.), his treatment is rather sketchy. The reviewer is disappointed not to find any reference to his own study of the subject in 25 *Minn. L. Rev.* 1 (1940), but is comforted by the fact that the author has also deemed such important monographs as Padelford's *International Law and Diplomacy in the Spanish Civil Strife* (1939) to be unworthy of reference.

The book is undoubtedly a very important contribution to international law. Its chief weaknesses are the somewhat unfair selectivity in respect to the works of other authors and the emphasis on conceptualism which slights both the profound changes in the international society and the political forces which steadily change the texture of the legal fabric. But with the basic analysis the reviewer is in full agreement, and he wishes to congratulate Professor Lauterpacht for having succeeded in bringing some of the most intricate institutions of international law upon a sound legal common denominator.

S. A. Riesenfeld.

University of Minnesota
Law School.

Atomic Energy; Its International Implications. By the Atomic Energy Study Group of the Royal Institute of International Affairs (London and New York: Royal Institute of International Affairs. 1948. Pp. 128. 4s).

In September, 1946, the Council of the Royal Institute of International Affairs appointed an Atomic Energy Study Group, under the chairmanship of Sir Henry Dale. The present interim report comprises a series of papers discussed by the Group. No attempt is made to reach joint conclusions, and very little consideration is given to the situation which would arise if international control of atomic energy proved unattainable. Subject to these limitations, the report is an admirable popular summary of the major aspects of the subject.

Special credit should be given to Dr. H. E. Wimperis, who, as *rapporteur* of the Study Group, prepared these essays for publication. Dr.

Wimperis's analysis of *World Power and Atomic Energy*, published two years ago, is still an important background treatise, and his three contributions to the present report are especially penetrating. It is well to bear in mind his warning that if the bomb is used, "we should have to rely chiefly on our striking power for defense," and that "whatever the shape and composition of the offensive force, it would have to be ready from the word 'go'" (p. 55). In discussing "the problem of reducing vulnerability to atomic bombs," to use Ansley J. Coale's phrase, Dr. Wimperis reaches the sane conclusion that while dispersion is theoretically the answer, "an intelligent compromise" must be made "between the ideal requirements of defense and those of social and industrial progress" (p. 59).

In general, the members of the Study Group are agreed that the implications of the atomic bomb call for a complete rethinking of the problems of national security and international organization, and that "the greatest risk is to do nothing" (p. 91). Yet Lord Hankey, in the final paper of the report, strikes a curious and jarring note, maintaining that all plans for the international control of atomic energy are unsatisfactory "from a human point of view," that sanctions must be omitted from any feasible plan, and that "on the whole, any plan of control seems likely to place a premium on unscrupulousness, to increase international friction, and the danger of war" (p. 122). Coming from the distinguished former chairman of the Scientific Advisory Committee of the British War Cabinet, these opinions call for amplification.

NORMAN D. PALMER.

University of Pennsylvania.

The End of an Epoch; Reflections on Contemporary History. BY A. L. ROWSE. (London: Macmillan and Co., Ltd. 1948. Pp. viii, 324. $4.50.)

Mr. Rowse has collected in this book what he considers his best political essays of the period from 1929 to 1946. The selections, many of which are extensive book reviews, range widely over European politics; the author's opinions are strongly expressed, and generally though not uncritically oriented toward the Labor party.

By its very nature, the book lacks continuity, but the subjects tend to concentrate in certain fields. Several of the essays deal with internal British politics, including those on the relationship of the Church of England to the state, reflections on Lord Baldwin, the political prospects of the Labor party in 1937, and the problem of the inefficiencies of the higher British civil service in World War II. In the field of British foreign policy, the author interprets the balance of power tradition and comments on the Munich crisis as the end of an epoch noted for Conservative fumbling. Several vital European problems are dealt with, among them the behavior of Germany, the failure of the Third French Republic, and the

effects of Soviet Communism on Europe. Another series of essays deals with such important questions of political theory as the reconciliation of individual liberty and the necessity for political organization, the possibility of the existence of political equality without economic equality, and methods of obtaining firm leadership in a democracy.

Though the subjects are miscellaneous, the author's viewpoint remains clear and generally consistent. He writes as an intellectual to other intellectuals, because he believes that it is the duty of the educated man to lead his fellowmen. The essays, therefore, assume that the reader knows the basic facts which the author undertakes to illuminate from the standpoint of an historian whose interest is in the principles of which the facts are but examples. Although the interpretation of events is often Marxian, Mr. Rowse does not belong to the school which has replaced the Bible with the writings of Marx and Lenin.

The author's style is sprightly, at times sprinkled with slang, and illuminated with a wealth of historical allusion. He is not sparing in the use of hyperbole, particularly in characterizing those with whom he disagrees. For example, he calls the Independent Labor Party idiots (p. 6). Mr. Stanley Baldwin was "an inferior man, and that appealed to the great mass of inferior people who are the electorate" (p. 80). He speaks of "foolish old Carlyle" who made a hero out of the violent Prussian, Frederick the Great (p. 184). The lively emotion often involved in the writing stirs in the reader equally lively reactions, so that the volume is stimulating indeed.

Because of the accuracy of the prevision, the breadth of scholarship from which the judgments are made, the magnitude of the problems undertaken, as well as for the provocative style, these essays were well worth gathering into book form.

EDWARD G. LEWIS.

University of Texas.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Only recently has the Princeton University Press published for the University of Cincinnati *Trouble Spots in Taxation*, by Harold M. Groves, of the University of Wisconsin. This little volume of 105 pages ($2.00) contains five provocative and interesting essays which were delivered in 1946 as the first in a projected series of lectures made possible by the Charles Phelps Taft Memorial Fund of the University of Cincinnati. The subjects of the essays are: "Taxation and Equality," "The Place of Government in the Scheme of Things," "The Future Rôle of the Net Income Tax," "Income versus Property Taxes for State and Local Governments,"

and "Unity versus Diversity in Taxation." The subtitle, *Essays in the Philosophy of Taxation and Other Public Finance Problems*, is much more indicative of the character of most of these papers than is the main title. But the unsuspecting reader who selects the book because it comes from Princeton will be surprised less because the contents diverge from what the title led him to expect than by the fact that the proposals advanced diverge much more from the public and private finance doctrines that have been flowing from the halls of Old Nassau during recent years. Harold Groves is distinctly not a Princetonian, a conservative, or an income-tax hater. Rather, he and his essays breathe forth the economic and political atmosphere of Wisconsin. He is an innovator, a "pragmatic" experimenter, and admits having "an itch to make the world over." Though he does not advocate any *single* tax, nevertheless he does put the personal income tax on the highest pedestal. Even the idiom of these essays is almost as characteristic of Wisconsin as is the cheese of that state. "Taxation," he says when discussing incentives, "is like dairy farming, not meat production; good husbandry builds up the herd. Taxation does milk the cows of private enterprise, but it should draw the line at killing off the animals." Though Groves is rather friendly to the Keynesians, he does not go so far as the extremists who say: "The purpose of taxation is never to raise money but to leave less in the hands of the taxpayer. The government can raise all of the money it needs by printing it if the raising of money is the only consideration." These essays contain little that Groves and others have not said elsewhere, but they are well designed to stimulate more fundamental thinking on the part of public-spirited laymen and others who know something of public finance, but who as yet have little real appreciation of its relation to the well-being and progress of present-day society.—Roy G. Blakey.

In *How Shall We Pay For Education*? (Harper, 1948, pp. x, 214, $3.00), Professor Seymour E. Harris makes clear that what President Cleveland trenchantly remarked about the tariff surplus is equally true of education in 1948—namely, that we are confronted with a fact, not a theory. The basic fact which this Harvard economist presents is that there is a "crisis in education." Subsidiary matters considered in this well documented, yet most readable, study are (1) inflation, (2) supply and demand for teachers and educated men and women, (3) sources of educational funds, (4) special financial problems of institutions of higher learning, and (5) problems relating to tuition and salaries. The broad, general conclusions of the author are that (1) inflation is the main economic threat to the educational system, (2) the case for federal aid is very strong, (3) institutions of higher learning also need federal aid, (4) tuition fees should not be increased, and (5) some answer must be made to the problems of teach-

ers' salaries and the exodus of teachers from the profession. As is the case in any study which proceeds from fact to advocacy, there are certain general assumptions—which are not always as well brought out as the statistical data—underlying the above conclusions. Most of these assumptions relate to the nature of a democratic society. For instance, Mr. Harris thinks, and most of us would probably agree, that education should not be the prerogative of those born into the higher income groups. A few conclusions relate to this sort of assumption, namely: "It is time that the public chose to accept its [economic] gains increasingly in leisure and education." Finally, there are a few assumptions on, for instance, the place teachers ought to have in the hierarchies of organized effort. One cannot help concluding from the evidence presented that, regardless of theories that the federal government ought not to get into educational aid, there is little hope under present economic conditions that private and local agencies can by themselves handle the problem of rising educational costs and increasing student loads. It is Mr. Harris' contribution to make clear that in education we are really at this moment confronted with a set of facts, not theories. Too much cannot be said for the author's technique of presenting his great mass of data. Would that more social scientists would be equally considerate of their readers!—PAUL P. VAN RIPER.

In his *The Philippine Story* (Farrar, Straus, and Co., 1947, pp. xii, 276, $3.75), David Bernstein has presented the viewpoint of a man who, as general political adviser to President Manuel Quezon in exile, had an excellent insight into Philippine affairs. Mr. Bernstein gives us a clear exposition of the peoples and resources of the archipelago, and shows the difficulties ahead of the nation if it is to achieve real independence. Beginning with the Spanish control, the author traces the growth of opposition to the alien and the rise of an independence movement. The American decision to control the Islands and to grant eventual independence was a bitter pill for many of the Filipinos. The story of our efforts to educate the people and make them a modern nation is well told, as is the account of our rather selfish reasons for finally granting independence—on our own terms. It is significant that of all the subject Oriental peoples only the Filipinos had access to the thought of the West through extensive education, and that they alone stood by their erstwhile masters in time of need, even at the cost of life and liberty. The United States promised to return to the Islands after the fall of Corregidor, and did so; but Mr. Bernstein raises the question of our making good on the further promises of restoration. Because of the pressure of our military men, we have forced collaborators into high government positions and have held off our real friends. We are restoring economic power to the few individuals who were in control before the war, and are helping in the re-creation of the one- or

two-crop economy that formerly brought so much difficulty to the Islands. The author strongly hints that if we fumble too much there is another power which will be able to step in, to the detriment of theFilipinos and of the world. In his characterization of the native leaders of the Islands, Mr. Bernstein presents a picture of kindly men on one side and scheming opportunists on the other. We see Quezon leading the opposition to the first independence bill because it was brought back by Osmeña. Quezon then goes to Washington and gets a bill that is no better and pushes it through. It is now his bill and he gets the prestige. Great events hinge on the petty actions of men, great and small. Well written and easy reading, the book deserves wide circulation—ANDREW E. NUQUIST.

Filled with hard sense, judiciously-chosen quotations, and sound technical analysis and information, *American Municipal Government and Administration* (D. C. Heath and Co., 1948, pp. ix, 630, $4.25), by Stuart A. MacCorkle, comprises the fruit of ten years of study by the director of the Bureau of Municipal Research at the University of Texas. Those who examine it expecting it to have been written on the assumption that Texas itself constitutes the larger part of the United States are certain to be disappointed. The volume lives up to its name very well; it offers a general survey of problems in municipal government and administration as they arise throughout the country. Evidently written on the valid theory that a single semester course in both city politics *and* administration is all that it is feasible for most colleges or universities to offer, MacCorkle's treatise will have deservedly wide appeal as a text for such courses regardless of where they are given. Illustrative of the insights which give the book its merits are the author's assertion (p. 104): "Of all the factors making for good or bad municipal government, not one is so important as the municipal electorate itself"; and his reminder (p. 150): "It is to be remembered that for each official who may be 'fixed,' there is many a common citizen who would attempt to 'fix' him." Of the very few blemishes the reviewer noted, the only one worth mentioning is the reference to public utilities as natural monopolies "by virtue of certain privileges granted by some governmental agency" (p. 552) rather than by virtue of the character of the service they render or the physical materials or facilities on which they are based. The treatment of municipal personnel and finance and of planning and zoning are notably adequate and valuable, and there is a fine concluding chapter on "Reporting to the Public." One of the most rewarding features of the volume comes at the very close —in an end paper consisting of a map of the United States with the areas of states and cities purposely drawn in proportion to size and with no regard to geographic shape. Needless to say, this underscores the urbanization of American life as no other map possibly could.—JOHN A. VIEG.

The Disruption of American Democracy (Macmillan Co., 1948, pp. 612, $7.50), by Roy Franklin Nichols, offers an analysis of the forces which produced the Civil War, developed in line with the William A. Dunning tradition. In effect, it is a continuation of the author's earlier study, *The Democratic Machine, 1850–1854*. In the present book, the author submits the thesis that the conflict was inevitable for two fundamental reasons. One was the contest for control of the federal government between the political leaders of the North and the South during the decade preceding hostilities. Through the Democratic party, the South had controlled the government almost continuously since the days of Thomas Jefferson. Now, Democrats of the North opposed Democrats of the South. Hence the cohesive function of political parties to bind together sections and groups was torn asunder. The cleavage of the party by this sectional struggle provided a victory for the Republicans in 1860. The hegemony of the South was broken. Unable to accept defeat and the loss of power, the Southern leaders organized a revolt. Thus for the first time in American history a section of the people refused to abide by the results of a national election. American democracy was disrupted. The second fundamental reason for the inevitability of the conflict, according to the author, was the constant agitation between different mores and the natural "confusion of a growing state." This kept the two sections in a condition of "hyper-emotionalism." Antagonisms bred tensions. The nation became a house divided. Southern statesmen were too intent on the struggle of power to solve the problems of social reconstruction. In the words of Professor Nichols, "The breakup of the Democratic party and the beginning of armed conflict were almost simultaneous; they were intimately related phenomena. The shattering of the party of Jackson was the bursting of a dike which unloosed an engulfing flood." The thesis of the book is not new; but it is ably and attractively presented.—MARY EARHART DILLON.

An addition to the rapidly growing list of new textbooks and aids for use in introductory courses in political science is *Basic Issues in American Democracy*, (Appleton-Century-Crofts, 1948, pp. xiv, 323, $2.40), by Hillman W. Bishop and Samuel Hendel. This is a collection of fifty-seven selections from various sources, grouped under five major headings entitled, respectively, "The 'Science' of Politics," "Democracy in a Changing World," "The Living Constitution," "Some Problems of Political Control," and "Some Problems of American Foreign Policy." Emphasis is placed on writings of contemporary thinkers and commentators, but selections are also included from the *Federalist*, significant Supreme Court opinions, and some of the nineteenth-century political philosophers. Short explanatory notes by the compilers introduce the student to the series of readings on each major topic or problem. The selections have

been chosen so as to present opposing, or, at any rate varied, points of view on controversial subjects by outstanding authorities. Some teachers will feel, no doubt, that certain issues they consider to be "basic" have not been touched. Few, however, will question the propriety of including under this heading each of the problems chosen for consideration. Since the emphasis is upon political theory and philosophy, intellectually immature college students may find some of the selections rather hard going. Nevertheless, this collection of readings should prove stimulating, provocative, and educational in the truest sense. It will certainly induce in students a fuller appreciation of some of the underlying, persistent problems of government.—JOSEPH E. KALLENBACH.

In January, 1947, and again in January, 1948, the President made regular economic reports required by the Employment Act of 1946. In July, 1947, a special interim report was made. These, together with an introduction by the Council of Economic Advisers and the text of the Employment Act, are reprinted for handy reference in *The Economic Reports of the President* (Reynal and Hitchcock, 1948, pp. 171, $2.50). These state papers are loaded with explosives. They contain the nation's economic budget, analysis of production, income, prices, wages, taxes, expenditures, purchasing power, profits, and other factors affecting the economy. Both short- and long-range objectives are discussed with surprising candor. For economic treatises, the reports are concise, interestingly written, and easily read. Statistics are portrayed in charts, tables, and appendices. All three reports are concerned primarily with the problem of inflation. Many will dissent from the wisdom of specific recommendations, but all will acclaim the reports' careful and skilful preparation and welcome the factual data and analysis. Nevertheless, a careful reading of the reports makes one painfully aware of the Employment Act's limitations. The Council of Economic Advisers can assemble data and write reports; it can advise the President, and through him Congress and the people; but it is so lacking in authority, personnel, and appropriations that its primary objective—full employment—may well prove illusory. Be that as it may, the publishers are to be congratulated upon making these materials promptly and easily accessible.—JOHN H. FERGUSON.

In his *Bourke Cockran; A Free Lance in American Politics* (Scribner's, 1948, pp. xv, 361, $3.50), James McGurrin provides a long-needed biography of the man who Winston Churchill in 1906 said was the "biggest and most original mind I have ever met." If the reader can suppress his impatience with the strongly adulatory character of the volume, he will find it useful, informative, and intriguing. The book deserves a place on the reference list for courses in political leadership and politics. As a por-

trayal of the career of an independent Democrat who frequently opposed Tammany's bosses, and who bolted his party in two national elections (1896 and 1912) because of sincere adherence to principle, the book makes inspiring reading. Appropriately, a great portion of the biography is devoted to Cockran's oratorical achievements in Congress, at Democratic national conventions, and during campaigns. Liberal citations of his speeches against imperialism, high tariffs, silver money, boss rule, and prohibition, and for Irish home rule, disarmament, and Tom Mooney provide fairly convincing evidence of why both Presidents Taft and Theodore Roosevelt characterized Cockran's oratory as "one of the greatest of all time." McGurrin's study contains much interesting material on New York City and national politics from 1880 to 1920. The accounts of the mood of several Democratic national conventions and of certain sessions of Congress are better and more informative than those dealing with New York City politics. In view of the political skill, indomitable courage, sincere liberalism, and oratorical powers attributed by the author to his subject, the reader wonders why Cockran failed to achieve the national recognition of Norris or LaFollette. As presented, the silver-tongued Irishman appears more able than the two Progressives. To the political scientist, the greatest weakness of the work is the lack of explanation of Cockran's failure to reach greater heights. Although none of the scores of quotations are footnoted, a useful bibliography has been appended.—HUGH A. BONE.

No little attention is given to politics and political issues in or about the Tennessee Valley by Donald Davidson in *The Tennessee*, Vol. II: *The New River: Civil War to TVA* (Rinehart and Co., 1948, pp. viii, 377, $3.50). The author of this work in the "Rivers of America" series writes with the effectiveness of a Francis Parkman, especially in covering the old steamboat days and the Civil War period. He has searched carefully for original sources and attained a high degree of factual accuracy. As he moves toward the contemporary scene, he reflects the pessimism of a Henry Adams over modern trends and industrial society, with the added complex of a Southern literary agrarian of deep convictions. Despite his factual correctness, his interpretation of TVA must itself be interpreted in the light of his skeptical complexes and reflexes. He omits favorable facts about the late Senator Norris and unfavorable facts about Senator McKellar. He shows sympathy for Arthur Morgan in that gentleman's fight with David Lilienthal and H. A. Morgan over TVA policy. He quotes approvingly from Justice McReynold's dissent in one of the TVA cases. One might challenge his assumption that the Scopes evolution trial and the Scottsboro cases had much to do with making TVA development a grand valley uplift movement instead of just a river improvement proj-

ect. His comparison of Gordon Clapp, TVA chairman, to a king of the Middle Ages, with subjects who could do nothing about his rule, could be questioned on the basis of Davidson's own facts. His book is an honest and biased criticism of "progress" (Davidson's quotes).—H. C. NIXON.

Professor H. S. Commager has prepared another edition of De Tocqueville, *Democracy in America* (Oxford University Press, 1947, pp. xxii, 513, $1.75), as an integral part of the publisher's series of Galaxy Edition of World's Classics. The result is still one more abbreviation and abridgment based upon the two-volume translation by Reeve. The chief objective, of course, has been to make more readily available the meat of De Tocqueville, and to cut away the portions which, by reason of obsolescence or concern with such matters as scenery, are not felt to be essential to an understanding of the classic pages of the author. Obviously, the content is still that of the great Frenchman; the selection of that which is judged to be vital and essential for today is patently Commager. Unless one wants to take on the shade of the basic author and question the content which he gave to his work over a century ago, attention must be confined to a verdict as to the usefulness of the current volume. Commager appears to have done a careful job—even a sympathetic and understanding one, since a sense of comprehension of and even affection for the thought of the work with which he deals has infused his prefatory essay. Certainly here is a handy, compressed edition which it is hoped will turn more scholars and students to the pages of a master.—CHARLES W. SHULL.

In a new edition of John H. Williams, *Post War Monetary Plans* (Knopf, 1947, 3rd ed., pp. cxxxvi, 312, $3.50), substantial additions are made to the earlier papers. The author's well known attack on the premises of the International Monetary Fund is brought up to date through additional papers, and an appendix adds his testimony before the Senate Committee on Banking and Currency. He has added chapters on the proposed ITO, trading between planned economies, and the economic lessons of two world wars. As one expects from Professor Williams, the papers contain much good sense and advice. Not the least attractive feature of the entire set is the sense of obligation on the part of the expert to contribute to the general understanding of the problems involved in international finance and to contribute to the public debate on important issues of public policy. Collection of the papers into a single volume has been a useful public service. It is a pleasure to be able to add that economics and public policy are united in a happy combination.—CHARLES B. HAGAN.

A Critical Appraisal of University Bureaus of Public Administration (Bureau of Public Administration, University of Virginia, 1948, pp. v,

55) is a collection of six papers, presented at the December 29, 1946, meeting of the American Political Science Association by Messrs. George W. Spicer, Harvey Walker, George A. Graham, Lawrence L. Durisch, Orin F. Nolting, and Joseph Pois. Although all of the contributors pay compliments to the bureaus, perhaps the principal theme of the symposium is that the time has come for the bureaus to "raise sights and aim for bigger game" (Spicer). While the collaborators do not wish to belittle the value of many of the compilations of information which the bureaus make available to government officials, they believe that there is need for pioneer studies of broad subjects such as the "problems revolving around relations between different levels of management" or the achievements of state administrative reorganizations. Some of the weaknesses thought to exist in the bureaus are their failure to mobilize the full resources of an entire university in dealing with the problems of governmental units, their lack of emphasis on informing citizens about the problems of state and local government, and their tendency to prescribe stereotyped remedies indiscriminately as panaceas for the ills of government units. Several of the contributors realistically take note of the paucity of funds that many bureaus must face.—M. NELSON MCGEARY.

A very elementary analysis of the various stages in the enactment of legislation is set forth by George H. E. Smith and Floyd M. Riddick in a pamphlet entitled *Congress in Action* (National Capitol Publishers, Inc., P.O. Box 7706, Washington 4, D. C., 1948, pp. 87). In addition to the narrative, there are many drawings illustrating how a bill becomes a law. The art work is uninspired. There are also instructions as to how a group can act out the business of Congress in play form, including a cast of characters, stage directions, and sample bits of dialogue. The pamphlet may be useful for high-school students.—DAVID FELLMAN.

FOREIGN AND COMPARATIVE GOVERNMENT

A new study, *The Government of the Netherlands* (Bureau of Government Research, University of Kentucky, 1947, pp. 150), by Amry Vandenbosch and Samuel J. Eldersveld, is welcome in spite of its brevity (95 pages of text, plus 10 for Indonesia, and the appended and long-needed translation of the Netherlands constitution by Professor Vandenbosch, together with the text of the Netherlands-Indonesian Agreement). Professor Vandenbosch writes clearly and interestingly about the constitution, monarchy, political institutions, provincial and municipal government, and political reconstruction in the Empire, happily combining his discussion of the provisions of the written constitution with the practices of political life. His longest, and in some ways most instructive, chapter deals with the "Formulation and Control of Foreign Policy." The docu-

mentation is based on Dutch sources—documents and commentaries—but is less extensive for some chapters than for others. A valuable feature of the study is the author's frequent references to the critical evaluation of governmental features by Dutch scholars and political leaders, although the reader may wish to know more about the author's own conclusions and judgments. The smallness of the book leaves significant lacunæ, such as a badly needed systematic treatment of political parties and programs, which are referred to only incidentally in relation to certain problems of government. Professor Eldersveld's chapter on "Trends in Government and Politics Since Liberation" incorporates, with slight changes, the material included in his chapter with a similar heading in James K. Pollock's *Change and Crisis in European Government.* It is lucid and most helpful on recent developments, including party alignments, set in their wartime background. It is to be regretted that the book has no index.—JOHN BROWN MASON.

The new Town and County Hall Series, which the Macmillan Company is publishing in the United States on behalf of George Allen and Unwin, has been enlarged by the addition of Mr. Norman Wilson's *Municipal Health Services* (1947, pp. 178, $1.75). This little book concentrates on the personal health services, to the exclusion of environmental hygiene. Its first half consists of a description of services rendered, and is partly a summary of laws, partly an analysis of current practice in the author's part of England, and partly a statement of standards of good practice. In the latter half of the book, the author, who is lecturer in public administration at the University of Liverpool, comes into his own, with a penetrating analysis of pre-1945 administrative machinery and a strong plea for an integrated health service. Any one interested in the implications for the United States of British experiments in this field will find much that is significant in Mr. Wilson's remarks about the unequal resources and unequal sense of responsibility of different units of local government, the uneven opportunities provided for residents in different areas, the inadequacy of permissive legislation, the shortcomings incident to reliance on voluntary agencies to discharge public functions, the false economy that wastes public funds investigating patients' financial resources, and the medical officers of health who make better doctors than managers and who need reënforcing with lay administrative officers. Although it dates from before the current British experiment in a national health service, the book well illustrates the administrative hypotheses that lie back of that form of socialized medicine.—W. HARDY WICKWAR.

In *Studies of African Native Law* (Capetown: The African Bookman; Philadelphia: University of Pennsylvania Press; and Oxford: B. H. Black-

well, Ltd., 1947, pp. vii, 174, $2.50), Julius Lewin, a South African barrister and senior lecturer in native law and administration in the University of the Witwatersrand, Johannesburg, brings together a series of essays, previously published by him on the sources and framework of this law; the conflict between African native and common (Roman-Dutch) law; the conflict between tribal laws; crime and punishment and native courts and British justice in Africa; the recognition of African native law; and on cases of *lobolo* (dowry) and inheritance. The purpose of the volume, as of the author's earlier *Outline of Native Law* (1944), is to supplement the scarce literature on this subject and to arouse interest in the law's study and reform in his own country and in the British African colonies generally. However, the fact that Mr. Lewin has approached his task in the spirit of the constructively critical sociological rather than the purely expository mechanical jurist makes the volume informative and interesting reading to students of jurisprudence everywhere. His discussion, for instance, of the impact of European law and civilization upon African tribal society and legal customs and his suggestions for remedying some of the injustices created by this process for the African native transcend his *milieu* and are applicable to the clash of legal systems in colonial areas everywhere and in all historical periods.—GEORGE MANNER.

Struggle for Germany (Harper's, pp. x, 260, $3.00), by Russell Hill, contains many excellent observations and opinions. The analysis of the present political parties is the best this reviewer has read anywhere in postwar publications. The chapter, "Workers of Germany Unite," deserves careful scrutiny by anyone who speaks or writes about Germany's political reconstruction. Mr. Hill sees very distinctly that neither the Christian Democratic Union nor the Social Democrats have found a clear political line. The Christian Democrats vacillate between a reformed capitalism and a Christianized socialism; the Social Democrats try to defend their Marxian traditions and at the same time to make concessions to the growing nationalism and to the still powerful Christian sentiments of the people, especially to the Roman Catholic segment of the population. A clarification is probably not possible before the peace treaty withGermany is written and accepted. And who knows anything about that? Will it be one treaty with one Germany or will it be several treaties—one with an eastern Germany and one with a western Germany? Even if Germany should be united, although decentralized in its administration, Mr. Hill's statement would be true that "Germany is a physical and moral wilderness. A country whose civilization has achieved a high technical development is now reduced to primitive conditions. Practically all people who are politically active in present-day Germany live on the mental and moral reserves of the pre-Hitler period." How will the young people act who

enter politics from the primitive conditions of their generation? No one can foretell. The uncertainty about the mind of the next political generation in Germany is nearly as disquieting as the question which is still open as to whether the Allies will come to some agreement on the German problem. Therefore, Mr. Hill's fair and practical proposals for a peace treaty and a future German constitution remain speculation. However, they are far superior to the suggestions presented by most current writers on the problem.—WILLIAM F. SOLLMAN.

In his *Ireland Her Own* (International Publishers, 1947, pp. 443, $3.75), T. A. Jackson outlines the Irish attempts to gain independence in the period from the aboriginal Gaelic era to the present. The picture is painted in broad strokes, as it must be, in order to deal with such an extensive subject. The author, in effect, writes a criticism of his own book in the preface, in which he states: "I write frankly as a partisan. I have done my best to be candid; but impartiality is beyond my scope." The various historical events are treated from a strongly leftist and enthusiastically pro-Irish viewpoint. In general, the thesis is that the English ruling classes have continuously thwarted the common people of Ireland, from Henry II's intervention in 1171 to the partition between the six northern counties and the twenty-six southern counties in the Anglo-Irish treaty of 1921–22.—EDWARD G. LEWIS.

INTERNATIONAL LAW AND RELATIONS

In his *Will Dollars Save the World?* (Appleton-Century Co., 1947, pp. 89, $1.50), Henry Hazlitt, who previously had written *Economics in One Lesson*, attempts to show that extensive lending by the United States is open to serious question. To him, the failure of European recovery is largely traceable to Allied policy in Germany; for economic revival of this key country cannot take place under present policies imposed by the Allied occupation forces. Moreover, government controls and the maintenance of currencies at an artificially high level are killing exports, destroying initiative, and preventing economies from reëstablishing themselves—a thesis also put forward by Jacques Rueff, president of the International Reparations Agency, Brussels, and honorary governor of the Bank of France, in his article "The Case for the Free Market" in the April, 1948, issue of *Foreign Affairs*. Like Rueff, Hazlitt believes that buyers and sellers should be free to sell exchange at rates warranted by supply and demand; not until free markets exist can we tell what Europe's real needs are, and the Sixteen Nation Report provides little real information on the point. The United States cannot hope to feed the world, since it produces only twelve per cent of the total food supply. Loans with conditions create ill will, prolong controls, and in many cases subsidize

less essential industries. Foreign loans will not make the United States rich; they intensify the inflationary forces at home; they will not do much to combat communism; and the author criticizes giving help to socialist countries which already are half-way toward communism. The Sixteen Nation Report talks in terms of production targets, a concept which is totalitarian in origin and which presupposes further price control, rationing, allocations, government licenses, etc. Europe, and indeed other nations too, must balance their budgets, eliminate exchange controls and price controls, lower tariff barriers, and promote the restoration of private lending. In Hazlitt's judgment, the United States should make capitalism "strong and free" by getting rid of controls; it should lower tariffs; return to a real gold standard and invite other nations to do the same; open markets freely to foreign loans; and give food, "not money," to Europe. Some of these points are well taken. With others, many economists will strenuously disagree. The title of the book suggests a straw-man question, for surely no one assumes that lending will of itself solve either the economic or political problems of the world. No mention is made of the international conferences relating to trade and employment held at Geneva and at Havana. All in all, the analysis, while containing several valid points, is not convincing on theoretical grounds, and some of the steps proposed seem, under present circumstances, heroic to say the least.—LINDEN A. MANDER.

Richard D. Irwin, Inc., Chicago, has added another volume to the growing list of volumes on international economic problems. *International Trade: Tariff and Commercial Policies* (1948, pp. xxv, 838, $5.00), by Asher Isaacs, is largely a history of tariff policies, foreign and domestic, together with some consideration of the more up-to-date devices for restricting the free flow of goods and services. The author also takes note of certain movements in recent years which have favored freer trade: commercial treaties; the World Monetary and Economic Conference of 1933; the Pan-American Conference; Hitler's plan for Europe; the Roosevelt-Churchill Eight-Point Peace Aims; the Federal Union Proposal, and other proposals for the modification of sovereignty; the Bretton Woods Monetary Agreements; the proposed International Trade Organization; the Geneva Reciprocal Trade Agreements; and the Marshal Plan for the revival of Europe. But all such halting steps along the road to freer international exchange of goods and services have been checkmated by nationalistic trends which are a hold-over from centuries past. Dr. Isaacs has given more space to certain aspects of the subject than they rightly deserve in a work which he hopes will impress those students who have seen the world before coming into his classroom. Even historical data, in a work of this kind, should be selected with discrimination. Cer-

tain policies which Dr. Isaacs discusses at length have had such an insignificant bearing upon current trade policies that one may question the emphasis. We grant that mercantilism should be explained to students of this subject; but we question the advisability of devoting five chapters or more to it. And so it is with certain other phases of the author's subject-matter. At the same time, so much of the nationalistic rivalry for trade advantage during the past two decades has been fought through monetary control that students of the subject may feel that this phase of the over-all problem of international trade should have received even more attention than the author has given it. The author undoubtedly meant this to be an "exhaustive" treatment of the subject. And that it very nearly is.—JOHN DAY LARKIN.

The German writer, Fritz Sternberg, has produced a program for American action on the ambitious theme. *How to Stop the Russians—Without War* (John Day Co., 1948, pp. vii, 146, $2.00). The translation is by Ralph Manheim. The small volume is polemical, and repetitious within each chapter. Yet it gives the impression of orderly and logically developed argument—which indeed it is, given the primary assumptions. The gist of the book is that the United States must alter its policies in so far as these support (throughout the world) reactionaries, big industrialists, feudal landlords, militarists, and nationalists; and must ally itself with progressive non-Communist forces and elements ("democratic socialist" ideas and groups). This theme is developed in five well-organized chapters regarding current movements in Europe and Asia, and Russian and American policies relating to the problems and aspirations of the peoples of these continents—three-quarters of humanity. The fundamental changes undergone in recent times by these peoples, and the direction in which they move from now on, will determine the future of the balance-of-power and of war and peace. The writer discloses succinctly the meaning and importance of the struggle against colonial imperialism and feudalism, and the necessity of agrarian reform in Asia; also the need, in Europe, for building a new social and economic structure by democratic socialist planning. Mr. Sternberg's thesis, then, develops in terms of the billion and one-half people who lie between Russia and the United States. We must be more progressive than the Russians in regard to these people and the modern economic and social movements which are enveloping them, if we are to stop Russian expansion and at the same time preserve progress and peace. Mere opposition to Communism is not enough. The general argument of this book will find much sympathy, even if the aspirations and institutions of other peoples—which we are here asked to support—are not and may never be the same as ours.—J. WILLIAM ROBINSON.

The revised edition of Sigrid Arne's *The United Nations Primer* (Rinehart and Co., 1948, pp. 266, $2.50) adds little to the information presented in the first edition. The first fifteen chapters, which cover important meetings during World War II, from the Roosevelt-Churchill conference on the Atlantic in August, 1941, to and including the San Francisco Conference of 1945, have not been changed at all, except for inclusion, at the end of appropriate chapters, of lists of members of the Food and Agriculture Organization, the International Bank, the Fund, and the United Nations itself. The last four chapters, dealing with the Potsdam meeting, the Council of Foreign Ministers, the Security Council, and the General Assembly of the United Nations, are all new, but they are somewhat disappointing, especially the last two. In view of the fact that the United Nations has been operating under the Charter for more than two years, it would seem that a proper revision of the volume should have called for a general overhauling with much less attention to the war-time conferences and a great deal more to the specialized agencies, the commissions, the Economic and Social Council, the Secretariat, and the other organs of the United Nations. With so many important organs slighted or entirely omitted, the volume is not in fact a primer of the United Nations. With the addition of only four new chapters, it is difficult to see why the author included one on the Council of Foreign Ministers, which is not, in the proper sense, a part of the United Nations. The book is written in a free and easy style, which may make some appeal to the general reader.—NORMAN L. HILL.

Ever since its establishment in 1943 at the University of Istanbul, the Turkish Institute of International Law has invited annually a distinguished foreign scholar to give a series of lectures on some phase of the law to whose study and promotion it is devoted. In 1947, it extended this signal honor to one of our leading international jurists, Professor Herbert W. Briggs, of Cornell University. As a result, Professor Briggs delivered five lectures at Istanbul dealing, respectively, with the rôle of international law; international legislation and the law of treaties; international law and human rights; the problem of world government; and the international control of atomic energy. Subsequently, these lectures were published in both Turkish and English under the titles *Devletler Hukukunun Tedricî Inkişafî* and *The Progressive Development of International Law*, as No. 4 of the Publications of the above Institute (Ismail Akgün Matbaasi, Istanbul, 1947, pp. 48, 46). Unquestionably, Professor Briggs' discourses not only come up fully to the high standards set by his predecessors in this series of lectures, Professor N. Politis of Greece, Professor and, formerly, Judge of the World Court D. Anzilotti of Italy, and Professor A. H. Smith of Great Britain. Because of their refreshingly critical

and positive, and yet optimistic, approach to their problems, they also constitute a valuable contribution to the science of the law of nations. This is amply attested by the fact that after their delivery at Istanbul Professor Briggs was asked to repeat some of these lectures at the University of Ankara Law School and before the Turkish General Staff War Academy.—GEORGE MANNER.

The interest of Professor Franklin Charles Palm, of the University of California, in the Second French Empire, an interest which in the three or four years before America's entrance into the Second World War manifested itself through his supervision of more than half a dozen monographic writings on various aspects of the period, has now borne fruit in the form of a monograph of his own. His *England and Napoleon III; A Study of the Rise of a Utopian Dictator* (Duke University Press, 1948, pp. xiv, 184, $2.50) is easy-flowing, exceedingly interesting, and thoroughly documented. It is therefore eminently readable. The story of Anglo-French relations during the establishment of the Second Empire, involving as it does employment by Louis Napoleon of appeals to fear and to prejudice and of insincere and conflicting promises and of other expedients made familiar by more modern dictators, is, it must be confessed, not a very edifying one; but the author's commendable emphasis on the relevant economic and social considerations, while depriving the account of some of its potential glamour, makes this history book more important to students of international relations and of French and English internal politics. In the latter respect, interest, it may be readily recognized, is inevitably aroused at a number of points only to be but partly satisfied, owing to limitations imposed by the specific subject of the study. Professor Palm has successfully fulfilled his aim "to fill one of the gaps" in the field dealt with; and it is to be hoped that his desire to follow with another volume will soon be realized.—R. K. GOOCH.

The United Nations (Harvard University Press, 1948, pp. 154, $2.50), by Herbert Evatt, is the record of a series of lectures by the vigorous foreign minister of Australia, in which he surveys the formation of the United Nations, its working, and its future. In the first chapter, he explains the liberalizing changes in the Dumbarton Oaks draft which were brought about at San Francisco by the smaller powers. In the second, he considers and condemns the various Soviet vetoes in the Security Council; evaluates the work of the Assembly and its faults, especially *bloc* voting; and surveys the work of the Atomic Energy Commission and the Trusteeship Council. In weighing the future, he discusses the Little Assembly, recording his fear that it will depreciate the General Assembly; condemns the non-coöperation of the Soviets in carrying out decisions; and supports a bold

and leading rôle by the Secretary-General. The book is a useful commentary on the origins and working of UN by one who has been in close contact with it from the start, and who is always forthright in his views and comments.—D. F. FLEMING.

Why has Canada hitherto not joined the Pan American Union? To this question, the short, but useful and timely, pamphlet, *Canada and the Pan American System* (Toronto: Ryerson Press, 1948, pp. viii, 47, $0.60), by F. H. Soward and A. M. Macaulay, provides an explanation. The record of Canadian partnership with other nations follows, on the whole, a consistent pattern. In the British Commonwealth, Canada has played a leading rôle as senior dominion, but has resisted the institution of stronger central machinery. In the League of Nations, she was an active participant, yet advocated restrictive interpretations of Article X. In the Inter-American system, Canada has been the good northern neighbor of the United States, but has shrunk from closer union. To unkindly critics, such attitudes give the appearance of being both in and out, or of getting the best of all worlds. To a more sympathetic view, they are understandable in the light of Canada's economic interests, her intermediate geographical position, and her mixed culture. In the pinch, moreover, Canada has amply shouldered her military obligations. The authors strongly hint that Canadian adherence to the Pan American Union is now more likely than in previous decades. Evidence for this is the growing interest in Latin America, the special affinities of Catholic and Latin French Canada for South American Latins and Catholics, and the new desire of the United States to secure Canadian membership. For the time being, however, many Canadians are loath to take a step which might appear to weaken the connection with Britain, and which might over-emphasize regional security at the expense of the global aims of the United Nations.—LESLIE LIPSON.

In July–August, 1947, the University of Michigan Summer Session sponsored a series of lectures for which nineteen lecturers were brought in to speak on as many different facets of the public and private relations of Americans with the outside world. College professors predominated, but there was a liberal sprinkling of men drawn from government service. A United States senator and a college president, both of whom had been professors, however, were included, and an admiral and a major-general were added to round out the series. Eighteen of the lectures (what became of the sole casualty is not reported) have been brought together by Howard M. Ehrmann and published under the title "Foreign Policies and Relations of the United States" in the January, 1948, issue of *The Annals of the American Academy of Political and Social Science* (Vol. 255, pp. v,

234). The papers are not of equal value, and a few lack significance. A lecturer who has been a professor of law is naive enough to think that the last war was distinguishable from earlier imperialistic wars because "it was a war for human rights." A career diplomat says that when our neighbors' houses were aflame "we went to their help." We were successful, apparently, for "the fire is now out." Such weaknesses are few and do not detract from the genuine merit of the greater number of papers. Lawrence M. Gould, president of Carleton College, provides an interesting and informative analysis of politics in the polar areas. Donald M. Brand, professor of geography at the University of Michigan, draws upon his rich and extended experience to write of the scientific and cultural relations of Americans with Mexicans. These and other papers make the undertaking worth while.—RALPH A. NOREM.

Aside from his observations on the possibilities of peaceful transition to socialism, not through the dictatorship of the proletariat but rather through new Communist-led "democratic" coalition governments, Earl Browder adds little of importance to the generally familiar Communist line in his *World Communism and U. S. Foreign Policy* (Published by the author, 1948, pp. 55, $0.50). Although he occasionally takes a few shots at what he calls non-Marxist concepts of the official American Communist party, from which he was expelled in 1946, Browder follows the major Communist line, American and Russian, in his criticism of the foreign policy of the United States. This familiar thesis is that there is currently being formed under the Marshall-Truman leadership a war-mongering, anti-Soviet, reactionary-imperialist *bloc* which may precipitate war against the Soviet Union. The way to check this dangerous trend is to swing back to the "progressive imperialism" of Franklin D. Roosevelt, which presumably was based on Russian-American coöperation, unanimity of the Big Three on all important issues, and support of the "people's democratic coalitions" led by the Communists. While Browder several times says that dogma must yield to facts, his own distortions of facts, contradictions, and unsupported interpretations are so numerous as to make his book difficult reading.—ALFRED P. FERNBACH.

POLITICAL THEORY AND MISCELLANEOUS

For those interested in the struggle for a working balance in our society, *Alternative to Serfdom* (Alfred A. Knopf, 1948, pp. 153, $3.00) will be required reading. Professor John M. Clark, in the tradition of Adam Smith, has gone beyond the economics of the market-place and has utilized the whole field of the social sciences to analyze the current threat to freedom. He offers no sweeping panaceas, but he does outline our dilemma. Where are we to find protection against irresponsible power—be it that of

labor or capital? Is it enough to place our trust in a return to the mechanics of the market-place and in the operation of pure and unbridled competition? For Professor Clark, the answer is no. The market is often biased. Competition has never existed in a pure state because it has always been expedient to limit it in the interest of security. State action can compensate for some of these inadequacies, but not all. The key to the problem is "that the price of freedom is its responsible exercise" (p. 4). Freedom means group and individual restraint. Yet no society can survive which is not realistic about the human element. It should not demand too much from the average man. It should also, through group allegiances, satisfy the very human desire of the individual to belong to some body smaller than the state. Today, however, too many of the groups commanding the allegiance of individuals are in conflict. The result is an aggravated pluralism, often approaching anarchy. When these groups possess monopoly power, as do both labor and capital, there is an undeniable danger of serfdom. The economics of the case are, of course, discussed completely. This is an excellent scholarly excursion into a subject which has been too much abused in contemporary literature.—LAWRENCE PELLETIER.

The impact of governmental controls over economic life on economic thinking, during the recent war, will furnish controversial literature for some time to come. Many academic economists were enabled to try their hand in implementing their beliefs about economic policies, and it is altogether desirable that they should furnish the results of their experience to those who continue to grapple with the intermixture of economics and politics in modern economies. In *The Economic Problem in Peace and War* (London: Macmillan, 1947, pp. 86, $1.50), Lionel Robbins, of the University of London, presents in a small volume some of his reflections on the wartime experience The three lectures present an acute and, more often than not, persuasive plea for use of the price system for the handling of the relative allocation of resources. They are critical of many attributes of the recent operations of so-called free economies, but other means of handling the inequities of the operation of the price system are suggested, such as taxation and allowances to the low income groups. He agrees with much of the recent criticism which denies the ability of the price mechanism to guarantee an aggregate demand to secure maximum output, and would transfer some responsibility to the state to obtain that result. But he warns accurately about an over-emphasis on full employment as a goal of financial planning. There is a beautiful analysis of the war economy under the all-out conditions of the two recent general wars. The volume indicates that Robbins has retained many of his prewar views, but he admits modification, particularly in connection with the aggregate demand situation. The volume as a whole is a fine contribution toward a common

basis between the right and the left in economic reform.—CHARLES B. HAGAN.

The most recent edition of John Locke's *Two Treatises of Government* (New York: Hafner Publishing Co., 1947, pp. xlii, 311) is edited by Professor Thomas I. Cook. Unlike the recent Blackwell edition edited by J. W. Gough, this one contains both treatises, together with the *Patriarchia* of Robert Filmer. Attaching more importance to Filmer's work and to Locke's *First Treatise* than many have done, Professor Cook argues that "while Filmer's specific allegations of fact were easy to challenge, and his detailed arguments were invalid, his fundamental attitude was properly historical and sociological." While Locke may have "effectively revealed the fallacies of Filmer . . . he evaded the difficulties in his own position, for which he cleared the ground too completely." In his penetrating analysis of the *Second Treatise*, Professor Cook's discussion of Locke's theory of property is particularly valuable for its clarity and insight. He shows not only how the Lockeian teaching could be used in defense of capitalism, but how "by reinterpretation" it could become "the basis of the most influential school of socialism." In a few short paragraphs on Locke's contemporary influence, Professor Cook declares that "Locke's specific teachings are in the main irrelevant to our actual problems, and hamper rather than aid us," partly because "modern psychology has undermined the concept of man as primarily a rational animal," and the concept of natural rights "has been rejected on the ground that rights are essentially social." But if Locke's "premises cannot be ours," as Professor Cook declares in his conclusion, it is difficult to understand how Locke nevertheless "embodies a lasting morality" and "represents the basic aspiration of our own society." What specifically is the basic aspiration of a society that rejects the concept of man as a rational animal?—JOHN H. HALLOWELL.

The intellectual unity of our Western civilization, the vital importance of a few perennial and continuing problems, and the necessity of understanding these problems historically if we would deal with them practically, are lessons which Professor McIlwain has always taught his students and the readers of his books. His *Constitutionalism Ancient and Modern* (Cornell University Press, 1947, pp. vii, 180, $2.50.) is now published in a revised edition, which has many interesting additions to the notes, but is otherwise unchanged. The book deals with one of the greatest of questions, which the author traces from ancient to modern times, showing how the concept of constitutionalism was formulated (and was challenged) in Greece, in Rome, in the Middle Ages, and during the development of the national state. Professor McIlwain emphasizes the fusion between

constitutional law and doctrine, political theory, and political practice in such a way that the book is of interest to specialists in all of these fields. It was written during the attacks on constitutionalism which preceded the recent war; it has lessons for today, though the reader will find such lessons implied rather than stated.—EUGENE P. CHASE.

A Sarmiento Anthology (Princeton University Press, 1948, pp. 336, $5.00), edited by Allison Williams Bunkley and translated from the Spanish by Stuart Edgar Grummon, is a worth while effort to bring together in English selections from the works of the great Argentine writer, educator, and statesman, Domingo Faustino Sarmiento (1811–1888). The collection is particularly important to the political scientist for including parts of Sarmiento's famous novel *Facundo* (not republished in English since Mrs. Horace Mann's translation of 1865) in which he attacks the authoritarianism of *gaucho* culture in the provinces and advocates the Europeanization and North-Americanization of Argentina. Sarmiento's thinking led him to support political democracy and close diplomatic and cultural relations with the United States. Indeed, Sarmiento established the doctrines of the liberal-democratic state so firmly that able defenders of Spanish and native authoritarianism such as Manuel Gálvez and Pablo A. Ramella have not been able to destroy his influence. The present anthology was published to give a synoptic view of a man significant for endeavors in various fields, and the political scientist cannot logically or fairly criticize the failure to emphasize Sarmiento's political thought. I did wonder, however, whether the volume would not have been strengthened by giving less space to Sarmiento's accounts of his travels in the United States (pp. 193–287), in which he shows less insight than such foreign observers as De Tocqueville or Bryce or perhaps even Ostrogorski, and by devoting additional space to his more substantial contributions.—WILLIAM S. STOKES.

The March, 1948, issue of *The Annals of the American Academy of Political and Social Science* (Academy Press, 1948, pp. 265, $2.00) is entitled "Organized Religion in the United States." Dr. Ray H. Abrams, of the University of Pennsylvania's sociology department, is editor; and the volume is organized in five sections, respectively headed: "Our Contemporary Religious Institutions"; "Relationship to Other Institutions"; "The Churches and Social Action"; "Trends and Future Prospects"; "Statistics and Bibliography." Section I includes sociological discussions of such topics as "Judaism"; "The Roman Catholic Church"; "The Protestant Churches"; "The Sects." One of the papers in Section II is of particular interest to political scientists. Here Dr. Harry F. Ward, for twenty years chairman of the Civil Liberties Union, writes on "Organized

Religion, the State, and the Economic Order." He predicts political conflicts because of the recent Supreme Court decision which upheld a New Jersey law providing payment of bus transportation for parochial school children out of public funds. Religious leaders view this as a threat to the traditional separation of church and state. The churches are politically active in striving to secure the most desirable governmental and economic framework in which to further their professed goals of moral law, social justice, and service to human needs. In Section III, the editor discusses "The Churches and the Clergy in World War II." Dr. Alfred McClung Lee's scholarly article on "The Press and Public Relations of Religious Bodies" has useful data on the scope and influence of religious publications. In Section IV, Dr. John Herman Randall, Jr., writes of "The Churches and the Liberal Tradition." He concludes that "American religion—will [continue to] generate leaders devoted to the spirit of free inquiry who will meet in some fashion the insistent demands of American experience for a religious message dealing with its fundamental secular problems" (p. 164). —MONA FLETCHER.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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AND
MARJORIE H. SIBLEY
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2970. Liquidation of German property in Sweden. 52p. 15c.

2991. Foreign service of the United States: educational preparation for foreign service officers and entrance examination. 81p. 25c.

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3101. Second report to Congress on the United States foreign relief program. 62p. 25c.
3108. Work of the United Nations Good Offices committee in Indonesia. 14p.
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Home office. British nationality bill, 1948. Summary. . . . (Cmd. 7326). London: H.M.S.O., 10 p. /3.

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NOTES ON SOME RECENT DOCUMENTARY MATERIALS

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The establishment of the new Moslem state of Pakistan in the subcontinent of India, with capital at Karachi in the Sind province, was officially heralded in two

extraordinary numbers of *The Gazette of Pakistan*, both dated August 15, 1947. The first issue contains the proclamation that Qaed-i-Azam Mohamad Ali Jinnah had taken office as Governor-General on that date. In the second issue is the notification of the Governor-General "that the government of Pakistan will have the following ministries: (1) Foreign affairs and commonwealth relations; (2) Defense; (3) Finance (4) Communications; (5) Commerce, industries, and works; (6) Food, agriculture, and health; (7) Interior, information, and education; and (8) Law and labour."

Early in September, a ministry of relief and rehabilitation of refugees was set up. In the third issue, dated August 17, 1947, are printed the reports of the Punjab and Bengal boundary commissions, each accompanied by a map. In the extraordinary issue of September 1 is reprinted from the *Gazette of India*, extraordinary, August 14, the "Pakistan (provisional constitution) order 1947." *The Gazette of Pakistan*, printed only in English, is available from the Controller of Printing and Stationery, Pakistan, at Karachi.

Under the new constitution of Japan, effective in May, 1947, six months after its promulgation on November 3, 1946, the new National Diet continues the practice of issuing the debates of the two houses also in English as *Minutes of Proceedings*, printed in a special series for each house as extra numbers of the English edition of the *Official gazette*. English editions of the Japanese parliamentary debates were first issued for the 90th Imperial Diet, which began to sit in May, 1946. "The Diet shall be the highest organ of state power and shall be the sole law-making organ of the State," according to the new constitution, and shall consist of a House of Representatives (four-year terms) and a House of councillors (six-year terms), both elected by all the people, peers and peerage no longer being recognized. Law 11, sanctioned February 22, 1947, provided for the election of the members of the House of Councillors, 150 to be elected from prefectural constituencies and 100 from the national constituency (at large). Law 43, sanctioned March 31, 1947, amended the law for the election of members of the House of Representatives. In no. 322 of the English edition of the *Official gazette*, dated April 30, 1947, is not only the Diet law itself (law 79, sanctioned April 28), but laws 80–85 inclusive, providing for payment of members of the houses, for expenses of witnesses called to the houses for Diet contingent funds, for Diet secretariat, for Diet library, and for Diet secretariat personnel. On May 20, 1947, the two houses of the National Diet assembled for organization, and were formally opened by the Emperor at the sixth meeting on June 23. In the House of Councillors, Jiichiro Matsumoto, on being inducted as vice-president, mentioned that ten years previously he had introduced a note of interpellation proposing to abolish the House of Peers and that now the House of Peers and the system of peerage had been purged. Tetsu Katayama was jointly nominated by the two houses to the Emperor as prime minister. On June 30, the House of Representatives, at the 7th sitting, adopted new rules of procedure, but did not print the text of the rules in the *Minutes of Proceedings*. Apparently the texts of legislative bills and resolutions are printed only in the Japanese edition of the debates, published as supplements to the *Kampo* (official gazette), thus at times making it somewhat difficult to follow the implication of action on bills through the English edition. Progress on legislation at the 1st session of the National Diet which ended in December, 1947, seems to have been slow. In passing, it may be noted that the 92nd session of the Imperial Diet, which closed on March 31, 1947, after having been sitting for a month and a half, was the last one under the constitution of 1890 and the final one for the House of Peers.

Resumption of civil administration for the Portuguese colony of Timor in Indo-

nesia was marked by the appearance of no. 1, dated October 26, 1946, of year XLVII, of the *Boletin oficial da colónia de Timor*, published weekly at the Imprensa Nacional in Dili. In the *Boletin oficial* are included not only the decrees and orders of the colonial government but the acts and decrees of the home government applicable in the colony as well as the *Actas* (proceedings) of the Conselho do governo da colónia in the form of a separate supplement. After the declaration of war, the *Boletin oficial* was suspended with 1942, no. 12, and there seems to have been no publication of an official gazette during the time of the occupation. Owing to the destruction and unhealthy conditions in Dili, the capital of the colony is to be transfered to a higher and healthier location called Nova Dili.

A special report of the Military Governor, United States zone in Germany, entitled *Elections in Germany (text and graphics)*, issued in a revised edition March 15, 1947, "endeavors to provide in usable form the basic statistical data concerning elections and referenda held in the various zones of Germany during 1946." In addition to a text of 22 pages, there are seven maps devoted to "spatial pattern of political behavior," five for the U. S. zone, one for the four zones, and one for Berlin.

In the British zone of Germany, the *Steuer- und Zollblatt herausgegeben mit Genehmigung der Militärregierung von der Leitstelle der Finanzverwaltung für die britische Zone*, issued at Hamburg not more frequently than once a week nor less frequently than once a month, beginning with Jahrgang I, no. 1, April 27, 1946, furnishes the records of the regulations of an all-zonal authority. This head office for tax administration, called in brief Finanzleitstelle, was created by Ordinance 24, effective in March, 1946, taking over for the British zone the powers of the former Reichsfinanzministerium under the Reichsabgabenordnung and its subsidiary legislation. The *Steuer- und Zollblatt* (replacing the *Reichssteuerblatt* and the *Reichszollblatt* of the Reichsfinanzministerium which were discontinued in the early part of 1945) includes in English and German text the customs and tax legislation, regulations, orders, administrative instructions, court decisions, and rulings of the Finanzleitstelle.

Record of another all-zonal agency in the British zone paralleling a former Reich ministry is to be found in the monthly *Arbeitsblatt für die britische Zone*, published beginning with a combined no. 1–2 in February, 1947, by the Zentralamt für Arbeit at Lemgo, containing labor legislation, decrees, and regulations as well as articles and book reviews, somewhat after the fashion of the *Reichsarbeitsblatt* of the former Reichsarbeitsministerium, which had ceased publication in the first part of 1945.

Under the title *Österreichische Behörden nach dem Stande vom April 1947*, the Staatsdruckerei at Vienna has published an official directory of the government of the republic of Austria (322 p., price: 8 schilling). This includes not only the members of the cabinet and of the legislative chambers, the officials of the courts, the heads of bureaus and other subdivisions of the ministries, of the national institutions, the principal officers of the recognized church bodies and of the official organizations of industry, of labor, of agriculture, and of professions, as well as the principal officials and members of legislative bodies for the eight provinces and Vienna. There is an index to names, but not to agencies. An earlier edition was issued as of July, 1946, and it is quite possible that this directory may be published annually, as was the *Österreichischer Amts-Kalender* previous to the Anschluss in March, 1938.

For the Norwegian parliamentary election of 1945, the results published under the title *Stortingsvalget, 1945, Elections en 1945 pour le "Storting," utgitt av Stortingets kontor* (Oslo, 1947, 141 p.) as *Norges offisielle statistikk*, x, 132, follow the plan of the previous reports on the elections of 1921, 1924, 1927, 1933, and 1936, and give at the end comparative summary tables for the elections of 1921–45. For each constituency, the lists of each party are shown as well as the lists of those elected. For the Storting itself, there is a biographical directory with portraits under the title *Stortinget 1946–1949* (Oslo, 1946, 116 p.), arranged by electoral districts. The directory is prepared by Vilhelm Haffner, former parliamentary archivist, in continuation of the series begun with the period 1900–03. A brief directory also seems to be printed more frequently, the latest edition having the title *Stortinget, 1947; Fortegnelse over representanter, addresser (pr. 1. Mars 1947), partier, regjeringen* (27 pl). A pamphlet edition of rules (43 p.) was printed in 1946 under the title *Stortingets forretningsorden med bevilgningsreglement.*

For the Free Territory of Trieste, constituted under article 21 of the treaty of peace between the Allied and Associated Powers and Italy, vol. 1, no. 1, of the *Official Gazette* of the Allied Military Government, British-United States Zone, Free Territory of Trieste, dated September 16, 1947, was issued almost simultaneously with the setting up of the jurisdiction, the A.M.G. being continued until the assumption of office by a duly appointed governor of the Free Territory. The *Official Gazette*, issued in English, Italian, and Slovene editions on the 1st, 11th, and 21st of each month, consists mainly of the orders of the Chief Civil Affairs Officer, and is similar to the *Allied Military Government Gazette* for the A.M.G. of Venezia Giulia, of which the final issue was vol. 2, no. 28, dated September 14, 1947.

For Cyrenaica, the eastern section of the former Italian Libia, now under British military administration with seat at Benghazi, the legislation and regulations are published in the semi-monthly *Cyrenaica gazette*, of which there is also an Arabic edition. Under the date of November 22, 1945, a compilation of the revised military legislation for that jurisdiction was printed by the Government press, Tripolitania, as vol. 3 (1945) of the *Cyrenaica gazette*, containing in 150 pages Proclamations no. 81–124, Regulations no. 3–13, and General notices no. 37–57. Proclamation 81 on revision and interpretation revoked all enactments of the military administration and provided that Proclamations no. 82–123 and Regulations no. 3–8 should come into force on February 1, 1946. Volume 3 was issued also in Arabic. General notice no. 13 of 1946 (April 27) provided that as of May 1, 1946, proclamations, regulations, and general notices were no longer to be printed in poster form and that as of June 1, 1946, the *Cyrenaica gazette* was to be published twice a month.

For Tripolitania, the western section of the former Italian Libia, under British military administration with its seat at Tripoli, a compilation of the revised military legislation was printed by the Government press, Tripolitania, as a 104-page special issue of the *Tripolitania gazette* as of December 31, 1945, including Proclamations no. 100–141, Regulations 23–36, and Regulations by port manager no. 7–10. The *Tripolitania gazette* is printed in three separate editions—English, Arabic, and Italian.

For Nigeria, the volume of *Legislative council debates, first session, 20th, 21st 22nd, 24th, 25th March, and 2nd April, 1947* (Lagos, Government printer, 1947, 330 p.) marks the first session under the new Nigerian constitution with a body representative of the whole country, having a majority of unofficial members. The dis-

patch of Sir Arthur Richards, governor of Nigeria, to the Secretary of State for the Colonies on the reform of the constitution, dated December 6, 1944, was presented to the Legislative Council on March 5, 1945, as Sessional paper no. 4 of 1945 under the title *Political and constitutional future of Nigeria* (10 p.), and also published in London by H. M. Stationery Office as Cmd. 6599 under the title *Proposals for the revision of the Constitution of Nigeria*. In the *Legislative council debates, twenty-third session, 5th, 6th, 7th, 8th, 9th, 16th, 17th, 19th, 20th, 22nd, and 24th March, 1945*, the discussion concluding with the unanimous approval of the proposals for reform and the recommendation for adoption is contained on pp. 494–544. The constitution itself is composed of several documents. The main ones were promulgated at London on August 2, 1946, and printed at Lagos as a special 57-page supplement to the *Nigeria gazette* extraordinary, vol. 33, no. 50, September 9, 1946: Nigeria letters patent, 1946; Nigeria (protectorate and Cameroons) order in council; Instructions under the royal sign manual and signet; Nigeria (Legislative Council) order in council; etc. Among the principal features of the new constitution of Nigeria, with an area on the west coast of Africa of the size of France, Belgium, and the United Kingdom combined, is (a) the new Legislative Council representative of the whole country and legislating for it, (b) a regional House of Assembly in the Eastern provinces at Enugu, in the Western provinces at Ibadan, and in the Northern provinces at Kaduna, with also a House of Chiefs in the Northern provinces, and (c) an African majority in the Legislative Council and in the houses of assembly. The 24th session of the Legislative Council, December 9th–12th, 1946, was the final one under the old constitution, the *Debates* being printed in a brochure of 79 pages. Of the regional houses of assembly, the *Debates* of the Western House of Assembly at Ibadan are the first to have been printed by the Government Printer at Lagos. In the houses of assembly, the standing rules may contain provision concerning the official language or languages to be used, and in the houses of the Northern provinces, one of the official languages shall be Hausa.

For Jamaica, the volume of *Minutes of the first session of the Jamaica house of representatives, 9th January, 1945–11th June, 1946* (Kingston, Government printer, 1947) has special significance as the journal of the first legislative body in the British West Indies to be elected on a manhood and womanhood suffrage basis, and is paralleled by a volume of *Minutes of the first session of the legislative council of Jamaica*, 9th January, 1945–1st July, 1946 (Kingston, Government printer, 1946). Under the "Jamaica (constitution) order in council, 1944," promulgated in London on October 27, and published together with two related letters patent and instructions on pp. 635–654 of the *Jamaica Gazette*, extraordinary, November 17, 1944 (vol. LXVII, no. 70) becoming effective on November 20, a House of Representatives of thirty-two members, elected by universal suffrage was created, and the existing Legislative Council was recreated to consist of three ex officio members, not more than two official members, and not less than ten unofficial members. Among the thirty-two members of the House of Representatives, it may be noted that one woman was elected. Debates of the two chambers are printed in full from day to day in the *Daily Gleaner*, Kingston, and published in annual volumes by authority for each house by the *Daily Gleaner* under the title *Jamaica Hansard: Proceedings. . . .* On November 18, 1944, just before the new constitution became effective, the old legislative council was dissolved, and the following is the title of the journal of the final session: *Minutes of the Legislative council of Jamaica for the year 1944 (68th session as established by Order in council, October 3, 1895)*. In the annual volumes of *The Laws of Jamaica*, beginning with 1945, the formula of enactment reads as follows:

"Enacted by the Governor of Jamaica with the advice and consent of the Legislative council and House of representatives." Under the Special Registration Law of 1944, the position of Chief Electoral Officer was created, and the detailed *Report of the Chief Electoral Officer pursuant to sub-section 6 of section 52 of the Representation of the People Law, 1944*, is available in separate form for the general election, 1944 (238 p.) and also for the by-election in the constituency of Hanover West, 1946 (7 p.) as well as for the by-election, 1947, in the constituency of Trelawny Southern (7 p.). The new constitution of Jamaica is available with the standing rules of the two chambers adopted early in 1945 as the *Handbook of the Legislative Council and House of Representatives of Jamaica* (Kingston, Government Printer, 1945, 88, xvi p.).